

## 1. Subject Matter of the Contract

- (1) These General Terms and Conditions ("Terms") are set forth by Proalpha Schweiz AG, based in Aesch (BL), CHE-101.490.966, and its affiliated companies ("Proalpha").
- (2) The subject of these General Terms and Conditions is the sale or rental of IT hardware by Proalpha. The specific descriptions of the IT hardware are set out in the applicable documentation for the IT hardware, which is available in the Proalpha Trust Center<sup>1</sup>.
- (3) The Quote, these Terms and all other documents referenced form the contractual relationship between Proalpha and the Customer ("Agreement"). The Agreement shall be concluded upon signature of the Quote by the Customer or a different declaration of acceptance by the Customer. The Terms in the current version shall also apply to future orders or quotes, even if they do not refer explicitly to these Terms. The current Proalpha prices shall apply. In case of doubt or contradiction, the individual documents shall apply in the following order:
  - a. Quote (including sheet of terms, if applicable)
  - b. The applicable IT hardware documentation provided in the Proalpha Trust Center
  - c. These Terms.
- (4) The Agreement conclusively governs the contents of the Agreement, 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 terms of contract by the Customer.

## 2. Delivery of Hardware

- (1) The Quote shall determine the scope, type and time of delivery. The delivery of hardware is subject to availability. Proalpha reserves the right to substitute a hardware delivery with hardware that is essentially equivalent.
- (2) Hardware is shipped to the Customer's delivery address at the Customer's risk and expense.
- (3) In the case of a hardware purchase, all delivered

goods remain the property of Proalpha or its supplier until full payment of the purchase price has been made.

## 3. Hardware Purchase

- (1) Payments from the Customer to Proalpha for a hardware purchase are due in full without any deductions within 30 days of the invoice date. All prices are net prices plus statutory value-added tax.
- (2) Complaints concerning incomplete or incorrect delivery or notifications of defects are to be made in writing by the Customer without delay, but within two weeks of delivery (in the case of obvious discrepancies or defects) or within two weeks of discovery (in all other cases) at the latest. If complaints or defects are not reported in due time, any claims for defects shall be excluded.
- (3) Complaints concerning trivial or minor defects (e.g. defective pixels in displays) shall be excluded.
- (4) Defects of a part of the delivered goods shall not entitle the Customer to object to the entire delivery or the entire contractual relationship with reference to the services.
- (5) In case of transport damage, the Customer shall provide a claims assessment from the railways, post office, carrier or, freight forwarder.
- (6) Proalpha shall not be liable for improperly executed modifications or repairs to the hardware by the Customer or a third party.
- (7) Claims for defects in hardware shall become statute-barred twelve (12) months after the transfer of risk.

## 4. Hardware Rental

- (1) The rental price and rental period are specified in the Quote.
- If the Swiss nominal wage index published by the Federal Statistical Office (BfS) for the Economic Sector "Computer Programming and Other Information Services JC 62-63" (NOGA wage index JC 62-63) based on 2020 = 100 baseline and the quarter in which the service is provided by Proalpha, Proalpha may increase its remuneration in line with the change in the index.(2)

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<sup>1</sup> Link to the Trust Center: <https://trustcenter.proalpha.com/en/>

Proalpha may increase the price at the earliest one year after the conclusion of the Agreement. This must be communicated three month before the increase becomes effective. If the index rises again, this regulation may be applied once per contract year. If the index is replaced by another one, the applicable index shall then apply to every future price increase.

- (3) A no-fault liability for legal or material defects in the Contract Software caused by Proalpha at the time of delivery to the Customer is excluded.
- (4) The Customer shall handle the rented hardware with the care that it usually applies to its own property. It must adequately instruct and train the users of the rented hardware or ensure in another appropriate manner that they use the rented hardware within the usual scope.
- (5) Proalpha may mark the rented hardware as its property by means of reasonable labeling. The Customer may neither remove nor alter this labeling or manufacturer information, serial numbers, seals, software license notices, etc. without the prior consent of Proalpha.
- (6) The Customer must report any defects or damages to the rented hardware to Proalpha without undue delay.
- (7) Upon expiration of the rental period, the Customer must return the rented hardware, including all accessories, to Proalpha. Proalpha will not back up the data and will delete or destroy the storage media after the return. It is the Customer's responsibility to make backup copies of any data stored on the rented hardware before returning it and to generally return the hardware with erased storage.

## 5. Liability

- (1) Proalpha shall be liable without limitation for
  - a. Injury to the body, life, 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.

- (2) Proalpha shall be liable for slight negligence if the breach concerns a cardinal contractual obligation whose observance enables the proper performance of the Agreement 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 Quote.
- (3) The liability for typical and foreseeable damages shall be a) in the case of hardware purchase, limited in amount to the purchase price of the IT hardware from which the direct damage results, and b) in the case of hardware rental, limited in amount to 100% of the remuneration paid by the customer under this Agreement in the 6 months prior to 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 5.
- (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.

## 6. Confidentiality

Both Parties mutually agree to keep confidential all non-public information of the other Party which they become aware of in the course of the Quote (hereinafter referred to as "Confidential Information") and to use it solely for the execution of the contractual relationship. (1) 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 agreement 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 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 execution of the Agreement employed at the receiving Party's own company or the companies affiliated with the receiving Party 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 Framework Agreement.
- (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 Agreement or by law, confidential information of the disclosing Party shall be kept confidential by the receiving Party for a period of 2 years after termination of this Agreement.

## 7. Data Protection

- (1) The Parties undertake to comply with the provisions of Swiss data protection legislation. Personal data may only

be processed for the purpose and to the extent necessary for the fulfillment and performance of the Agreement. To this extent and for this purpose, personal data may also be disclosed to a company affiliated with one of the contracting Parties, whether in Switzerland or abroad, provided that the requirements under Swiss data protection legislation are met.

- (2) 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 Agreement in accordance with Article 28 GDPR using a template provided by Proalpha. The Customer must download the Data Processing Agreement from the Trust Center, which shall be deemed an annex to this Agreement.

## 8. 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, without limitation, the following: war, insurrection, riots, embargo, explosion, fire, flood, severe weather, terrorist attacks, sabotage, nuclear and reactor accidents, pandemics or widespread failure of the power supply or communication networks/the internet.

## 9. Assignment

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

## 10. Written Form

Amendments or supplements to the Terms shall only be effective if they are agreed in writing. The same

shall apply to a change to the written form requirement.

## 11. Choice of Law, Place of Jurisdiction

- (1) This Agreement shall be governed by Swiss law, 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 Agreement is Zurich.

## 12. Severability Clause

- (1) Should any provision of this Agreement 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 upon.