

# General Terms and Conditions (GTC) for Licenses (Perpetual and Subscription)

## 1. Subject of Application

- (1) These General Terms and Conditions ("GTC") are set forth by Proalpha Software Corp., registered with the commercial register of the district court Hillsborough County, New Hampshire, and the affiliated companies within the Proalpha Group ("Proalpha").
- (2) Subject of these GTC is the provision of Contract Software<sup>1</sup> for an unlimited duration ("Perpetual") or a limited duration ("Subscription") as well as the licensing of the Contract Software.
- (3) The Order, these GTC and all other documents referenced 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 quotes, even if they do not refer explicitly to the GTC. The current Proalpha prices shall apply. In case of doubt or contradiction, the individual documents shall apply in the following order:
  - a. Order (including condition sheet, if applicable)
  - b. The respective Product Description defined in the Proalpha Trust Center<sup>2</sup>.
  - c. 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.

## 2. Scope of Services

- (1) Proalpha shall provide the Contract Software to the Customer within a reasonable period after the conclusion of the Contract. In case of Subscription licenses, Proalpha may unilaterally amend the Product Description in the course of updates of the Contract Software, provided that this does not lead to a loss of essential functionality existing at the time of conclusion of the Contract. Customers shall not be entitled to the continued existence of

individual functions or properties which do not significantly impair the intended use.

- (2) For subscription licenses, the Support and Maintenance Services for the Contract Software are included within the subscription fee. The General Terms and Conditions (GTC) for Support & Maintenance Services apply to these subscription licenses, subject to the condition that both the Proalpha Life Cycle Policy and the applicable Service Level Agreement (SLA) govern the provision of such services. The Proalpha Life Cycle Policy and applicable SLA are available at any time in the Proalpha Trust Center.
- (3) The installation and configuration of the Contract Software is not part of the Contract. Proalpha shall only be liable for adjusting the Contract Software to the Customer's individual requirements in the context of separately ordered services to which the General Terms and Conditions for Professional Services apply, which are defined in the Trust Center.

## 3. Customer's Rights of Use

- (1) The Contract Software and the corresponding license key shall be provided to the Customer by Proalpha via electronic delivery.
- (2) Proalpha shall grant the Customer a simple, locally unrestricted right to use the Contract Software. In case the Contract Software is perpetual, the right of use is temporally unlimited. In case of a Subscription license, it is limited to the term of the Contract. The right of use shall be limited to the license parameters and quantities defined in the Order.
- (3) The Customer may solely use the Contract Software for its own business purposes. The Customer has the right to use the Contract Software in the scope of the agreed license parameters and quantities for the benefit of the Customer's group companies under unified management.
- (4) Insofar as the Contract Software includes development tools or databases, these are intended for sole use in connection with the Contract Software. Any additional use is subject to the prior written consent by Proalpha.
- (5) Third-Party Software is subject to the license terms of the respective provider.

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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.

<sup>2</sup> Link to the Trust Center:  
<https://trustcenter.proalpha.com/en/terms-conditions>

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- (6) Insofar as components of the Contract Software are subject to an open-source license, the Customer shall receive the rights of use from the creators of the open-source software in accordance with the terms of the open-source license. Insofar as the terms of such open-source license conflict with these GTC, the terms of the open-source software license shall take precedence. They are provided to the Customer in the Trust Center.

### 4. Source Code

- (1) The right of use under Clause 3(2) also extends to the source code of the Contract Software, subject to the following conditions.
- (2) Proalpha shall provide the customer with the source code solely for the purpose of rectifying any errors in the Contract Software lawfully used by the customer and implementing customer-specific functional adjustments, insofar as this is necessary for the contractual use of the software. The use of the source code is restricted to the customer's own business operations and—if contractually agreed—to affiliated companies. Any further use, particularly for the development of software intended for distribution to third parties, is expressly prohibited.
- (3) The storage and use of the source code are permitted exclusively on hardware (e.g., a server) that is in the direct possession of the customer or an affiliated company. Storage or use with a hosting provider is only permissible if the provider is contractually obligated to maintain confidentiality and implement appropriate security measures. Upon request, the customer shall provide Proalpha with hosting details and ensure that Proalpha can verify compliance with these requirements at any time. In case of violations, Proalpha may require the customer to host the source code independently or select an alternative hosting provider that meets the security requirements.
- (4) If the customer culpably breaches any of the aforementioned obligations to protect the source code, they undertake to pay an appropriate contractual penalty to Proalpha for each violation. The amount of the contractual penalty shall be determined by Proalpha at its reasonable discretion and shall be subject to judicial review.

### 5. Obligations of the Customer

- (1) The Customer shall be obligated to fulfill all necessary contractual obligations free of charge and on time. This includes creating and maintaining the system requirements necessary for proper operation according to the Product Description, providing access to the system, performing regular data backups, and minimizing the consequences of a service disruption.
- (1) In the case of a service disruption, the Customer shall inform Proalpha about the failure immediately.

### 6. Payment

- (2) Payments from the Customer to Proalpha for the Contract Software are due without any deductions within 14 days of invoicing. All prices are net prices plus applicable statutory VAT. Fees for Subscription licenses shall be invoiced to the Customer monthly in advance. Monthly fees for Support and Maintenance Services are included in Subscription licenses.
- (3) Proalpha reserves the right to increase the fees for the Services upon the expiration of the Initial Term or any Renewal Term, provided that such increase shall not exceed ten percent (10%) per year unless justified by increased costs of operation or market conditions.
- (4) Proalpha shall notify Customer in writing of any fee increase at least three months prior to the effective date of such increase.
- (5) Continued use of the Services after the effective date of the price adjustment shall constitute acceptance of the new fees.

### 7. Term and Termination for Subscription Licenses

- (1) The Contract becomes effective upon conclusion of the Contract. For Subscription licenses, the minimum term is 36 months, starting with the provision of the Contract Software.
- (2) At the end of the minimum term, the Contract shall be automatically extended by twelve months ("Contract Extension Period"), unless it has been properly terminated in writing by one Party with a notice period of three months prior to the end of the minimum term or to the respective Contract Extension Period.
- (3) The right of termination for cause remains unaffected. Good cause for Proalpha to terminate the Contract without notice or to suspend

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services temporarily shall be given if (a) the Customer is in default of remuneration payments amounting to two months' remuneration or (b) insolvency proceedings concerning the assets of the Customer have been opened and/or the Customer is threatened with insolvency.

### 8. Consequences of the Termination (Subscription)

- (1) Upon termination of the Subscription license, for whatever legal reason, all rights of use of the Customer of the Contract Software shall cease.
- (2) After a Subscription license has expired, the Customer must ensure that the Contract Software is not used any further and that it is deleted from all computers and data carriers of the Customer. The Customer must prove this at the request of Proalpha.

### 9. Warranty

- (1) The Contract Software is defective if it deviates from the contractual quality when used in accordance with the Contract and, as a result, the Customer's intended use is prevented or unacceptably reduced. Defects in the Contract Software shall be remedied a) for the software purchase within the warranty period of one year from the delivery or b) for Subscription licenses within a reasonable period. This shall be done at the discretion of Proalpha either by delivering an update or by giving reasonable instructions. To the Customer
- (2) If Proalpha is unable to remedy the defect, if the remedy is delayed beyond a reasonable period, or if the remedy fails for any other reason despite three attempts to remedy the defect, the Customer shall be entitled to rescind the Contract or demand a price reduction. The right to rescindment shall however be applicable solely in case of a defect which either impedes or significantly reduces the contractual use of the Contract Software. Proalpha prohibits the Customer from conducting self-repairs on the Contract Software.
- (3) If it is revealed that no defect exists and the Customer would have been able to realize so if they had analyzed the issue more carefully, Proalpha is entitled to charge the Customer for the analysis of the alleged error reported as a defect by the Customer based on the applicable prices of Proalpha.

### 10. Liability

- (1) Except for Customer's payment obligations, Customer's breach of Section 5 (Obligations of the Customer), or either party's possible indemnity obligations, the cumulative liability of each party and its affiliates shall be limited to 100% of the purchase price for perpetual licenses and to the annual amount of the license fee for Subscriptions. If the purchase price is less than EUR 50,000, the liability shall be limited to EUR 50,000.
- (2) Except for customer's breach of Section 5 (Obligations of the Customer) or either party's breach of Section 11 (Confidentiality), neither party will be liable for special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to business interruption, lost profits, loss of data or cost of cover, even if such party knew or should have known of the possibility of such damages.
- (3) The waivers and limitations in this Section 10 apply regardless of the form of action or theory of liability asserted, whether in contract, tort (including negligence), strict liability, product liability, or any other legal or equitable theory, and will survive and apply even if any limited remedy in the agreement fails of its essential purpose.
- (4) Neither party limits or excludes its liability for: (a) death or personal injury caused by negligence; (b) fraudulent misrepresentation or willful misconduct; or (c) any other liability to the extent that such liability cannot be excluded or limited by applicable law.
- (5) Strict liability for any legal or material defect in the Contract Software by Proalpha at the time of delivery of the Contractual Software to the Customer is excluded.
- (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.

### 11. 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

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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 performance of the Contract 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 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 individual agreement or by law, Confidential Information of the disclosing Party shall be kept confidential by the receiving Party for a period of three (3) years after termination of this Contract.

## 12. Data Protection

Where Proalpha processes personal data on behalf of Customer, a Data Processing Agreement (DPA) under

applicable U.S. data protection laws shall be executed.

## 13. Right of Audit

- (1) Proalpha shall be entitled to audit the contractual usage of the Contract Software by the Customer. For this purpose, Proalpha may request information about all usage data of the Contract Software from the Customer. Proalpha may also verify the required usage data at its own discretion at the respective installation site of the Customer or have it verified by an auditor or IT expert commissioned by Proalpha.
- (2) Any audit of the relevant usage data at the installation site of the Customer shall be carried out with a notification of at least 30 calendar days in advance and generally not more than once a year, unless there are indications that the Customer is using the Contract Software in breach of the Contract. In this case, Proalpha may perform an audit outside the annual cycle. The audit must not unreasonably impair the Customer's daily business.
- (3) The information obtained in the course of the verification shall only be used by Proalpha for this purpose and is subject to the confidentiality obligation.

## 14. 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.
- (3) Insofar as an event of force majeure lasts longer than one month and the Parties find no possibility of replacing the services concerned, the Parties may terminate the Contract with a notice period of three (3) months to the end of the month.

## 15. 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 shall be excluded in this respect and due to the aforementioned breaches of deadline; this shall not affect the other provisions on liability.
- (2) Proalpha draws the attention of the Customer to the fact that the Contract Software is 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:
  - a) The Contract Software may not be made available in a country against which the USA have imposed an embargo.
  - b) Furthermore, the Contract Software may neither directly nor indirectly be used in connection with the planning, development, production, or usage of nuclear, chemical or biological weapons without 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 Contract Software concerned.

## 16. 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.

## 17. Subsidiary Agreements

The Contract and the corresponding Annex hereto constitute the entire agreement between the Parties. No tacit, oral or written side agreements have been made. Amendments or supplements to these GTC shall only be effective if they are agreed in writing. The same shall apply to a change to the written form requirement.

## 18. Governing Law and Venue

This Agreement is governed by the laws of the State of New Hampshire, excluding its conflict of law rules. The exclusive venue shall be in the courts located in Hillsborough County, New Hampshire.

## 19. 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.