1. Subject of Application

(1) These General Terms and Conditions (GTC) are set forth by proALPHA Schweiz AG, with registered office in Aesch (BL), CHE-101.490.966, and its affiliated companies ("proALPHA").

(2) The subject matter of these GTC is the provision of Support and Maintenance Services for the Contract Software[1] distributed by proALPHA. The provision of Contract Software and the provision of Professional Services is subject to separate general terms and conditions.

(3) The Order, these GTC and all other documents referenced 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 Terms in the current version shall also apply to future orders or Orders, even if they do not refer explicitly to these GTC. In the event of any inconsistencies the following order of precedence shall apply:

    a. Order (including the condition sheet if applicable)

    b. Product Life Cycle Policy

    c. Applicable Service Level Agreement ("SLA") and

    d. These GTC.

(4) The term definitions specified in the SLA shall also be applicable in these GTC.

(5) The Product Life Cycle Policy, the SLA and these GTC are available in the proALPHA Trust Center[2].

(6) 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.

(7) proALPHA reserves the right to unilaterally update and amend the Product Lifecycle Policy and SLA, provided the essential service character is maintained and the changes are reasonable for the Customer. The updated version will be made available for download in the proALPHA Trust Center and will take effect on the upload date.

Additionally, proALPHA will inform the Customer of the changes via the service portal.

2. Scope of Services

(1) proALPHA shall provide the Support and Maintenance Services specified in the Order and especially in the SLA in accordance with the generally accepted rules of technology applicable at the time of the service. As part of the Support and Maintenance of the Contract Software, proALPHA provides the following services: (1) receipt and processing of errors and other reports, (2) correction of errors within the Contract Software, (3) delivery and provision of updates, (4) further services described in the SLA, and (5) provision of a replacement copy of the Contract Software. The delivery of a replacement copy shall not constitute any additional rights of use.

(2) The Product Lifecycle Policy defines the versions of the Contract Software that proALPHA supports and maintains, detailing the scope of these services. proALPHA does not owe Support and Maintenance Services for versions that are no longer maintained. In order to continue to receive the Support and Maintenance Services, it may therefore be necessary for the Customer to install the necessary updates of the Contract Software in order to have a version for which proALPHA provides Support and Maintenance Services according to the Product Lifecycle Policy.

(3) Insofar as updates are provided by proALPHA within the scope of this Contract, the Customer shall be responsible for the installation. Updates are only provided in the object code.

(4) proALPHA does not offer any warranty for the correction of a malfunction. In the context of the Support and Maintenance Services, proALPHA shall also not be obligated to ensure a specific availability of the Contract Software.

(5) proALPHA endeavors to continuously develop the Contract Software. The Customer shall not be entitled to a specific development.

(6) In the context of the Support and Maintenance Services, the Customer shall not be entitled to have the Contract Software adapted to a changed hardware or software environment or another operating system.

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[1] "Contract Software" refers collectively to software distributed by proALPHA that is either produced by the proALPHA Group or another company.

[2] Link to the Trust Center: https://www.proalpha.com/trustcenter

(7) By placing the respective Order, the Customer approves of the subcontractors mentioned in the Trust Center (including other companies of the proALPHA Group).

(8) The place where the Support and Maintenance Services shall be provided is proALPHA's registered office.

(9) If required, the Customer undertakes to fulfill the cooperation obligations incumbent on it (especially with regard to remote access) resulting from the SLA.

3. Payment

(1) The Customer shall pay the fees agreed in the Contract for Support and Maintenance Services, the amount of which depends on the value of the licensed Contract Software ("Maintenance Basis"). If the Maintenance Basis changes during the term of the Contract, the fees shall also change in accordance with the Maintenance Basis. The due date of the fees is independent of whether these services are used or not. The Customer shall pay material costs and travel expenses separately to the extent necessary. 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 Swiss nominal wage index (Lohnindex) published by the Federal Statistical Office (FSO) for wages in the "JC 62-63 Information technology and information services" sector (NOGA Lohnindex JC 62-63) increases on the basis of 2020 = 100 on the basis of the quarter in which the service is provided by proALPHA, proALPHA may increase its remuneration based on the index change. proALPHA may increase prices at the earliest one year after conclusion of the contract. This must be announced three months before it takes effect. If the index rises again, this regulation shall apply accordingly once per contract year. If the index is replaced by another index, the then current index shall apply to any future price increases.

4. Warranty

(1) In case of defects in updates provided by proALPHA in the context of the Support and Maintenance Services, the provisions on warranty in the general terms and conditions for the proALPHA licenses shall apply accordingly.

The provision of updates shall not entail an extension of the warranty from the License Agreement.

(2) The Customer shall immediately examine the provided updates in a test environment after they have been provided, in particular with regard to the completeness and functionality of basic program functions.

(3) Defects detected must be reported to proALPHA in text form immediately. The notice of defects shall contain a detailed and concrete description of the defects.

(4) Defects that could not be detected during the proper investigation have to be reported in text form and described in detail immediately after discovery.

5. Rights to Support and Maintenance Services

(1) Upon full payment of the agreed remuneration for the updated Contract Software, the Customer shall receive a non-exclusive, unlimited, non-transferable or non-sublicensable right to use the updated Contract Software in its own business operations. One month after the update, the right to use the previous version expires.

(2) If the software customized by proALPHA for the Customer is an interface or a functional expansion of Contract Software, the Customer shall be entitled to use the customization to the same extent as the Contract Software concerned.

6. Term and Termination

(1) The start and the term of the Contract are defined in the Order. The minimum term for Support and Maintenance Services is 36 months. At the end of the minimum term, the Contract shall be automatically extended by 12 months ("Contract Extension Period"), unless it has been properly terminated in writing by one Party with a notice period of 6 months prior to the end of the minimum term or to the respective Contract Extension Period.

(2) The right of the Parties to the extraordinary termination of the Contract with a good cause shall remain unaffected by the termination regulations agreed herein.

(3) Every notice of termination shall be given in writing.

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7. 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) The amount of liability for typical and foreseeable damages 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 7.

(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.

8. 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 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 an individual agreement or by law, confidential information of the disclosing Party shall be kept confidential by the receiving Party for a period of 3 years after termination of this Contract.

9. 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 Agreement in accordance with Article 28 GDPR using a template provided by proALPHA. The Customer must

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download the Data Processing Agreement from the Trust Center, which shall be deemed an annex to the Contract.

10. 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.

11. 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.

12. Written Form

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

13. Choice of Law, Place of Jurisdiction

(1) This Contract shall be governed by the law of Switzerland, 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 Zurich.

14. 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.

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