

# General Terms and Conditions (Terms)

Böhme & Weihs GmbH (as of 5/2025)

These General Terms and Conditions (hereinafter "Terms") apply to all contracts between Böhme & Weihs GmbH, a company of the proALPHA group of companies (hereinafter "Provider") and its contract partners (hereinafter "Customer") whose subject matter is covered by these Terms. These Terms and Conditions shall apply exclusively; cross confirmations or terms and conditions of the Customer are hereby expressly objected to. This also applies if the quote of the Customer is accepted with reference to the primary validity of the own terms and conditions.

## A. General Provisions

### 1. Subject matter of the Terms

- B. Software License
- C. Support and Maintenance
- D. Software as a Service (SaaS)
- E. Hardware
- F. Consulting Services

### 2. Definitions

The following terms have the meaning defined below, unless otherwise specified:

"Quote" means a quote provided by the Provider to the Customer for one or more of the items listed in Clause 1 designated services. The quote can also be called "Order", "Order Confirmation", "Purchase Order" or otherwise.

"Provider Software" means software developed and licensed by the Provider.

"Consulting Services" means special software development, implementation and other IT services, excluding support and maintenance.

"Documentation" describes the user documentation belonging to the contract software.

"Contract" means within the scope of these Terms a contractual relationship concluded on the basis of a quote between the Provider and the Customer including these Terms as well as further documents referenced in the Quote for one or more of the following 1 designated services.

"Error" in the contract software exists if the contract software deviates from the service specification when used in accordance with the contract and the intended use by the Customer is canceled or unreasonably reduced.

"Third-Party Software" means software products of third parties which are sold by the Provider for the purpose of use with the Provider Software.

"Service Description" or "Service Level Agreement" or "SLA" means a document which describes and specifies the services to be provided by the Provider.

"proALPHA Group of Companies" describes proALPHA Holding GmbH and its subsidiaries.

"Property rights" means intellectual property rights for intellectual and industrial services. These include technical property rights, such as patent rights, utility model rights, design protection rights, semiconductor protection rights, as well as labeling rights protected by the trademark act and copyright.

"Software Purchase" means the purchase of an unlimited software license in exchange for a one-time license fee in advance.

"Subscription License" means the acquisition of a time-limited software license against payment of a recurring license fee.

"Support and Maintenance" describes the support and maintenance services in relation to the Providers of software, as further described in the contract.

"Trust Center" refers to a website of the Provider or the proALPHA group of companies on which the Customer can access certain contractually relevant documents specified in these GTC or in the offer. The Trust Center can be accessed at <https://www.boehme-weihs.de/de/trustcenter>.

"Update" describes a new version of the Provider software. Updates may contain new functions, improvements or changes to existing functions as well as adjustments to changed legal requirements.

"Contract Software" or "Standard Software" means the Provider of software and/or third-party software which is the subject matter of the contract. Updates become part of the contract software after provision.

### 3. Quote, Contract Bases, Right to Change

- (1) Declarations of acceptance by the Customer that contain changes to the Provider's quote are considered a rejection of the original contract quote and will only lead to the conclusion of the contract if they have been expressly confirmed in writing by the Provider.
- (2) A contract is also concluded without an express declaration of acceptance of the quote if the Customer indicates through his actions the intention to perform the contract.
- (3) The contract is finally determined by the following ranking:
  - a) Quote;
  - b) the provisions of these Terms and Conditions;
  - c) Other documents contained or referenced in the Quote, such as specifications, SLAs, license terms, etc.
- (4) Service specifications or SLAs are provided in the Trust Center to the Customer electronically. The Provider has the right to update and change these services in a uniform manner for all Customers of similar services, provided that the essential service character is retained. The latest applicable version shall be available to the Customer in the Trust Center or otherwise electronically for access and shall enter into force on the date of the announcement. The Customer shall not be entitled to maintain individual features.

### 4. Duration for permanent liabilities

- (1) In case of permanent liabilities (e.g. subscription license, support and maintenance, SaaS, hardware rental), the start of service, minimum duration and notice periods are determined from the respective quote.
- (2) Unless explicitly stated in the Quote, perpetual liabilities begin with the delivery of the corresponding contract software or rented hardware and are concluded for a minimum term of one (1) year. Afterwards, the respective contract shall be extended by a further year if it is not terminated by either party in writing with a notice period of three (3) months for the expiration of a contract year.

- (3) An early termination or partial termination during the respective minimum contract duration or a contract extension is excluded. The right of termination for good cause remains unaffected.
- (4) An important reason that entitles the Provider to terminate the Service without notice or temporarily discontinue the service is if the Customer is in arrears with the payment of the remuneration in the amount of an amount that reaches the regular remuneration for two months.
- (5) If the Provider terminates the Contract extraordinarily due to an important reason for which the Customer is responsible, the Provider shall be entitled to payment of damages in the amount of fifty percent (50%) of the remuneration valid until the end of the next regular termination date. This does not affect the assertion of further damage.
- (6) The termination must be given in written form; text form is not sufficient.

#### **5. Prices, terms of payment, customs duties**

- (1) The relevant prices for licenses, deliveries and services result from the quote of the Provider.
- (2) All prices are subject to statutory sales tax.
- (3) Invoices of the Provider are due for payment without deduction within seven (7) calendar days after the invoice date.
- (4) If the Provider delivers goods and services to the Customer abroad, the Customer shall bear the applicable customs duties.
- (5) The Customer shall only be entitled to offset rights if his counterclaims have been legally established, are undisputed or accepted by the Provider. This also applies to the Customer's rights of refusal of performance and retention, whereby the Customer may only assert such rights if they are based on the same contractual relationship.

#### **6. Remuneration under continuing obligations, indexation**

- (1) In case of continuing obligations (e.g. subscription license, support and maintenance services, SaaS), the amount of the remuneration to be paid regularly by the Customer shall be governed by the Agreement. Unless otherwise stipulated in the Quote, the Provider shall charge the regular remuneration annually in advance. It is possible to perform a partially annual calculation in the first year.
- (2) If the German wage cost index (Lohnkostenindex), 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, the Provider may increase its remuneration on the basis of the changed index. The Provider 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.
- (3) For subscription licenses concerning third-party software, the Provider may pass on the price adjustments of the respective manufacturer to the Customer in the same proportion and at the same time instead of the above-mentioned index regulation.

#### **7. Subcontracting**

The Provider is entitled to use subcontractors (including other companies of the proALPHA Group) to provide services.

#### **8. Cooperation obligations of the Customer**

- (1) Insofar as the service provision by the Provider requires the cooperation of the Customer, the Customer shall provide the necessary cooperation and provided services free of charge to the Provider.
- (2) Individual cooperation obligations can be defined in more detail in the specifications.
- (3) The Provider is not responsible for delays in the service provision which are due to the Customer or a third party engaged by the Customer failing to provide necessary cooperation services or provided services late, incomplete or defective. This entails additional expenses for the Provider, who can charge the Customer separately, without prejudice to other rights.

#### **9. Confidentiality**

- (1) Each Party undertakes to treat Confidential Information of the other Party confidentially and to use it exclusively for purposes relating to the performance of the Contract, and to limit access to Confidential Information to persons who need the Information for the purposes of the Contract. Each Party may disclose Confidential Information to the extent required by law, provided that it notifies the other Party in advance of such enforced disclosure (to the extent permitted by law) and provides adequate assistance to challenge such disclosure.
- (2) Information is to be treated as confidential if it is expressly designated as such by a party or if the confidentiality results from the circumstances. This includes the price information provided by the Provider.
- (3) The confidentiality obligations shall continue to apply beyond the end of the contract for a further three (3) years. A legal obligation to maintain secrecy remains unaffected.

#### **10. Customer Data**

- (1) In the relationship between the Provider and the Customer, all rights, titles and claims to the Customer Data and all intellectual property rights therein are exclusive property and exclusively owned by the Customer.
- (2) Insofar as the Provider has access to data of the Customer, the Provider shall take the technical and organizational measures usual according to the generally accepted rules of technology and agreed in the Quote to sufficiently protect the data of the Customer from unauthorized access, unauthorized modification and destruction as well as from loss during the necessary work.
- (3) Insofar as the Provider processes personal data for the Customer that are subject to the General Data Protection Regulation (GDPR), the Parties conclude a processing contract in accordance with Art. 28 of the GDPR. The processing contract can be accessed by the Customer in the Trust Center and applies in addition. The order processing contract also applies to the provision of services by other companies of the proALPHA Group as subcontractors.
- (4) The Customer grants the Provider and, if applicable, the corresponding subcontractors the right to perform all actions with regard to the Customer data required for the service provision.

## 11. Infringements of intellectual property rights

- (1) If a third party lawfully asserts to the Customer that the contractual use of a delivery and/or service provided by the Provider infringes the intellectual property rights of the third party, the Provider undertakes at his discretion and at his expense to either (1) change or replace the respective delivery and/or service in such a way that it no longer infringes the intellectual property rights of the third party or (2) obtain for the Customer the right to use the respective delivery and/or service in accordance with the contract. If the Provider fails to do so on reasonable terms, the Parties shall be entitled to the following rights: (1) If the claims of the third party concern the contract software which the Customer has acquired from the Provider by means of software purchase, the Customer shall be entitled to withdraw from the software purchase of the contract software which infringes the intellectual property rights of the third party; (2) if the claims of the third party concern support and maintenance services or subscription licenses which the Customer has received from the Provider, the Customer shall be entitled to terminate the Contract with respect to the support and maintenance services which infringe the intellectual property rights of the third party for an extraordinary cause without notice; (3) if the claims of the third party concern consulting services, the Customer has received from the Provider, the Customer is entitled to withdraw from the contract for the consulting services violating the intellectual property rights of the third party; (4) if the claims of the third party SaaS concern, each party is entitled to terminate the contract partially with respect to the respective module of the contract software extraordinarily without notice for an important reason.
- (2) In addition, the Provider shall indemnify the Customer, upon the Customer's request, against all undisputed or legally established claims of the third party which are based on the fact that the Customer's use of a delivery and/or service provided by the Provider in accordance with the Contract infringes the intellectual property rights of the third party. This also includes the necessary legal fees of the Customer incurred as a result. In addition, the Provider shall reimburse the Customer for any further damages within the scope of the liability agreed on in these Terms.
- (3) The Customer undertakes to inform the Provider immediately of any intellectual property right violation asserted against the Customer. The Customer shall not accept any claims of the third party from an alleged intellectual property right infringement without the Provider's prior written consent. If the Customer ceases to use the delivery and/or service affected by the alleged intellectual property right infringement for reasons of harm reduction, he will inform the third party that the cessation of use does not imply acceptance of the intellectual property right infringement alleged by the third party.
- (4) The Customer shall coordinate any defense measures against the third party with the Provider in advance to the reasonable extent and, as far as legally possible, leave the Provider to defend itself against the third party, including any settlement negotiations.
- (5) Insofar as the Customer is responsible for the intellectual property right infringement itself, claims of the Customer against the Provider due to the intellectual property right infringement are excluded. This especially applies if the infringement is based on the fact that the Customer uses

or has used the delivery and/or service causing the infringement by way of derogation from the provisions of these Terms and/or the agreements in the contract.

## 12. Liability

- (1) The Provider shall be liable according to the statutory provisions for damages resulting from injury to the life, limb or health of a person, for damages resulting from the violation of a guaranteed quality of a thing as well as for damages for which the Provider is obligatorily liable according to the Product Liability Act. In addition, the Provider is liable for intentional or grossly negligent breaches of duty according to the statutory provisions.
- (2) The Provider is only liable for breaches of duty that are simply negligent, regardless of the legal reason, if an essential contractual obligation is breached, the fulfillment of which only enables the proper execution of the respective contract and on whose fulfillment the Customer may regularly rely. In these cases, the liability of the Provider is limited to foreseeable, typically occurring damages. The Parties agree that for typical and foreseeable damages, the liability amount per contract year is limited to eighty percent (80%) of the remuneration paid by the Customer in the twelve (12) months prior to the incident under the Agreement, whereby the software purchase is based on the license price paid in advance for thirty-six (36) months after the delivery of the Contract Software in equal shares.
- (3) Insofar as the Provider is obliged to compensate for the effort required to restore destroyed or lost data due to a breach of obligation, this obligation is limited to the effort that would have been required to restore the data if the Customer had properly backed up the data, but not beyond the amount that is to be paid by the Provider according to the liability limitations agreed on here.
- (4) The Provider shall not be liable in any other way, in particular the Provider shall not be liable for lost profits or indirect consequential damages of the Customer, except in the cases mentioned in the above paragraphs (1) to (3). This does not apply to any claim for exemption by the Customer in the event of intellectual property right violations.
- (5) The liability agreed on here also applies to the legal representatives, organs, subcontractors and vicarious agents of the Provider, insofar as they are independently liable to the Customer.

## 13. right of review

The Provider is entitled to check the contractual use of the contract software by the Customer. For this purpose, the Provider may collect non-personal data that reflect the Customer's usage behavior as well as the use of the contract software and updates.

These data serve the optimization of the contract software, the creation of usage statistics and the check for possible misuse. They can be collected in the context of software as a service (SaaS) and on-site installations (on-premises).

In addition, the Provider is entitled to check the required usage data at the Customer's installation site at their own discretion or, at the Provider's discretion, to have them checked by an auditor or IT expert selected by the Provider.

## 14. Customer Reference, Usage Analysis

- (1) The Customer agrees to the proALPHA Group using its company logo and indicating its company name for

business purposes, in particular for marketing and advertising purposes as a reference of the proALPHA Group. The Customer declares to be the owner of the rights.

- (2) The Customer agrees that the Provider and Company of the proALPHA Group may collect, collect and analyze information obtained from the Customer's use of the contractual services for the purpose of product development and - in summarized form and without identifying the Customer or other persons - may use it for industry analyzes, performance comparisons and analyzes.

#### **15. cession**

The Customer is not entitled to assign contractual claims to third parties in whole or in part without the prior written consent of the Provider. This does not apply to any monetary claims of the Customer.

#### **16. Subsidiary agreements and written form requirement**

The provisions of the Treaty constitute the entire agreement of the Parties. No tacit, oral or written side agreements have been made. Changes or amendments to contractual provisions between the Parties shall only be effective if they have been agreed in writing. This also applies to a change of the written form requirement.

#### **17. Choice of law, place of jurisdiction**

These Terms and Conditions as well as all individual contracts are subject to the law of the Federal Republic of Germany to the exclusion of the provisions for referral to another legal system to the exclusion of the UN Convention on the International Sale of Goods (CISG). The exclusive place of jurisdiction for all disputes arising from and in connection with this Agreement is Wuppertal.

#### **18. Force Majeure**

- (1) The Provider is not liable for a delay or impossibility in the fulfillment of their obligations if this is due to force majeure, including force majeure on the part of the subcontractors of the Provider.
- (2) If an event of force majeure lasts longer than ninety (90) days, each Party may terminate for cause extraordinarily without notice if it is no longer reasonable to maintain the Agreement. Services rendered shall be paid by the time of termination.

#### **19. Export Restrictions**

The Customer is aware that the use of the Supplier's deliveries and services may be subject to export and import restrictions. The supplier's performance of the contract is subject to the condition that the fulfillment is not impeded by any impediments due to national and international regulations of export and import law and no other legal regulations. The Customer assures that neither he nor his staff are included on a government prohibition list (or equivalent list), nor may he permit users to access or use the Supplier's deliveries and services in violation of laws and regulations on export control.

#### **20. Restrictive clause**

The possible invalidity of individual provisions of these Terms and Conditions shall not affect the validity of the remaining contractual content. If any provision of these Terms or any

other contractual element is or becomes invalid, a provision which comes closest to the Parties' intentions in a legally effective manner and in economic terms shall be deemed to have been agreed instead of the invalid provision. The same applies to filling a gap.

### **B. Software License**

#### **1. Delivery of Contract Software**

- (1) The contract software is provided to the Customer electronically ("electronic delivery").
- (2) The installation and configuration of the contract software is not included in the price of the license and must be agreed separately in writing on the terms and prices offered by the Provider.

#### **2. Scope of delivery and function of the contract software**

- (1) The contract software is always delivered to the Customer in the version that was up-to-date at the time of the purchase order.
- (2) The system requirements, terms of use and functional scope of the contract software are conclusively determined by the product description of the Provider valid at the time of delivery. The Provider does not owe any other quality of the Contract Software. If the Customer wishes further functions of the contract software than those agreed on in the contract, this must be agreed separately in writing between the Parties.
- (3) The Provider reserves the right to register and activate the contract software during the installation.
- (4) In case of SaaS, no delivery is made according to this Clause 2.

#### **3. Customer's rights of use for the contract software**

- (1) The Provider grants the Customer the non-exclusive right to use the Contract Software as intended and exclusively for his own business purposes. It may not be used by or on behalf of third parties, including the work results generated by the software.
- (2) The duration of the right of use results from the contract, in case of doubt from the agreed payment method of the license fee. The right of use for software purchases is unlimited in time. For a subscription license or SaaS, the right of use is limited in time to the period covered by the remuneration paid.
- (3) The right of use is specified and limited according to the license model described or referenced in the contract (e.g. a certain number of users). Any use beyond this requires the prior written consent of the Provider and requires the Customer to pay the relevant purchase price to the Provider in return for the extension of the right of use.
- (4) The Customer may only duplicate the Contract Software insofar as this is necessary for the intended and contractual use, e.g., installation on the mass storage and loading into the memory.
- (5) The Customer may only make modifications to the Contract Software with the express written consent of the Provider or on the basis of mandatory legal regulations.
- (6) The transfer of the contract software or the transfer of rights of use to third parties is excluded.
- (7) The right of use is subject to the full payment of the license fee.



#### **4. External software, open source software**

- (1) The corresponding license terms of the respective third party apply to third-party software. These are accessible to the Customer in the Trust Center or as a link directly to the third-party Provider's website.
- (2) Without prejudice to the above right of use for the Contract Software, the provisions of the open source software licenses applicable to the corresponding parts of the Contract Software or components provided with them remain unaffected. If the terms of such an open source license conflict with the terms of these Terms, the terms of the open source license shall take precedence.

#### **5. Cooperation obligations of the Customer**

- (1) It is the Customer's responsibility to create the system requirements and terms of use required for the proper operation of the contract software and to maintain them over the useful life.
- (2) The Customer shall keep himself up-to-date by means of the documentation provided by the Provider and any supplements or instructions communicated for this purpose and shall inform the Users accordingly.
- (3) The Customer shall take reasonable precautions to minimize possible damages in the event of a breakdown or malfunction of the Contract Software (e.g. by regular data backups and monitoring of the processing results in regular cycles according to the generally accepted rules of technology).
- (4) The Customer shall take the usual precautions according to the generally accepted rules of technology to protect the contract software from unauthorized use and shall pass on this obligation to a hosting Provider commissioned by the Customer.

#### **6. Warranty for Contract Software**

- (1) Defects of the Contract Software shall be corrected by the Provider within a reasonable period of time after written notification by the Customer. At the Provider's discretion, this is done either by providing an update or a reasonable instruction for action. The warranty period for software purchases is one (1) year from the delivery of the contract software. The delivery of an update does not trigger a new warranty period.
- (2) Insofar as the Provider requires access to the system environment of the contract software for analyzing or correcting defects, the Customer shall grant the Provider the required access upon request without undue delay. If the Provider is not able to correct the contract software, it is delayed beyond a reasonable period of time or fails for other reasons, the Customer is entitled to withdraw from the contract or demand a reduction. However, the right to rescind shall only exist if this is a defect which either cancels or substantially reduces the contractual use of the defective contract software.
- (3) The warranty is excluded (a) if the Customer does not use the Contract Software in the agreed system environment or under the agreed terms of use, (b) for malfunctions of the Contract Software caused by the system environment of the Contract Software, (c) if the Customer or a third party not belonging to the proALPHA Group has changed the Contract Software on behalf of the Customer.
- (4) The Provider is not responsible for delays in the correction or avoidance of a defect if the delay is due to the Customer failing to fulfill their cooperation obligations in the analysis and/or correction of a defect, if the

Customer's report of a defect is incomplete or the Customer fails to provide all information, documents and files required for the analysis and correction of a defect at the Provider's request.

- (5) If it turns out that there is no defect and the Customer could have recognized this with the application of the required care, the Provider is entitled to charge separately for the processing effort for the analysis of the alleged defect reported by the Customer at the then valid prices of the Provider.

### **C. Support and Maintenance**

#### **1. Scope**

The provisions of this section shall apply to agreed support and maintenance services for Providers of software which are not SaaS, if agreed upon.

#### **2. Subject of Services**

- (1) The Provider provides the following services for support and maintenance:
  - a. Provision of a service desk for receiving and processing error messages,
  - b. Fixed errors in the contract software,
  - c. Delivery and provision of updates and
- (2) The subject matter of the support and maintenance services outlined above may be specified in more detail in the service specification or service level agreement (SLA).
- (3) For third-party software, the support and maintenance services may differ from the service specification or SLA. These deviating or additional conditions might be provided to the Customer in the Trust Center. The Provider may define a different service in deviation from the service specification or SLA if the third-party Provider of the third-party software changes their support and maintenance services. Support and maintenance services for third-party software can be provided directly by the third party.
- (4) The Provider provides the services described here only for standard software. If the Customer also wishes support and maintenance of software developed individually for the Customer (e.g. customizations/modifications of the contract software), such services shall be subject to remuneration and agreed separately.

#### **3. Discontinuation of products**

- (1) The Provider shall have the right to discontinue support and maintenance services for Provider Software uniformly for all Customers by written notice with a notice period of twelve (12) months. In this case, the support and maintenance fees paid in advance shall be reimbursed on a pro rata basis.
- (2) If third-party Providers of third-party software cease their support and maintenance services, the Provider is entitled to terminate the support and maintenance services for such third-party software at the same time.

#### **4. Remuneration for Support and Maintenance**

- (1) The remuneration for the support and maintenance services is defined in the Quote and is based on the licenses granted to the Customer.
- (2) When you later purchase individual additional modules or other license extensions, they will be automatically included in the existing contract for support and maintenance as of their provision.

- (3) The support and maintenance fees are due from the order of the contract software or individual additional parts.

#### **5. Cooperation obligations of the Customer**

- (1) The Customer shall immediately inform the Provider of any errors of the contract software and shall support the Provider in the error investigation and error correction to the extent required. The error message shall be accompanied by as detailed information as possible, as described in the specifications or SLA.
- (2) The Customer shall retrieve and install updates provided by the Provider for the purpose of correcting errors for the release immediately after the Provider has provided them,
- (3) The Customer shall take reasonable precautions in the event that the Contract Software does not work properly (e.g. by regular data backup). Before installing an update, the Customer shall make an up-to-date backup of their data.

#### **D. Software as a Service (SaaS)**

##### **1. Scope**

The provisions of this Chapter D shall additionally apply to the contractual relationship, provided that the Provider operates software for the Customer on their server, which the Customer uses via their Internet connection ("SaaS").

##### **2. Subject of Services**

- (1) The subject matter of the service (hereinafter "Cloud Provision") is the provision of the software specified in the Quote on servers of the Provider for use by the Customer via Internet connection for a limited period of time, as well as storage space for the data generated by the Customer by the use of the Contract Software (hereinafter "Customer Data").
- (2) The Provider shall keep the contract software and Customer data from the data centers of common cloud infrastructure Providers (so-called public cloud) in the territory of the European Union available for use by the Customer via Internet connection as of the date defined in the Quote.
- (3) In order to access the cloud provision, the Customer requires an Internet connection and one of the common web browsers released by the Provider or, depending on the SaaS product, an app provided by the Provider.
- (4) The functionality of the contract software at the time of the conclusion of the contract results from the scope of services agreed in the Quote and, if applicable, the Provider provides the Customer with the functional descriptions
- (5) For the cloud provision, the contract software is always provided for use in the latest version.
- (6) The Provider therefore has the right to update and change the contract software as well as the service specification and SLA uniformly for all Customers, as long as the essential service character is retained.

##### **2 Storage space and Customer data**

- (1) The cloud provision includes storage space for Customer data to the extent described in the quote or specifications. If the storage capacity is exceeded, the Customer has to reorder the corresponding extensions from the Provider at the relevant terms.

- (2) Due to the underlying cloud infrastructure, Customer data are logically but not physically segregated.
- (3) The Customer cannot directly access the Customer data outside the contract software. The Customer may export the Customer Data, as far as possible within the scope of the functionality of the Contract Software, or commission the Provider with the extraction of the Customer Data subject to remuneration. The Customer may request the deletion of the Customer data within reasonable periods of time at any time, but existing Customer data in data backups are temporarily left behind and cannot be deleted immediately for technical reasons.

#### **3 Rights of Use**

- (1) User accounts and login data cannot be transferred. The Customer shall take appropriate organizational and technical measures to protect user accounts from unauthorized access or misuse and to inform the users about the purpose of the access data.
- (2) If the Customer or one of its users violates the regulations on the rights of use, the Provider may temporarily block the Customer's access to the cloud provision until the violation has been remedied. In order to remove the block, the Provider may demand an appropriate remuneration to compensate for the effort and economic value of the non-contractual use. In the event of repeated violations despite a corresponding written warning, the Provider may terminate the contract extraordinarily without notice, without prejudice to further claims.

#### **4 Technical availability, faults**

- (1) The Customer acknowledges that no technical process is completely free of problems and that this also applies to the cloud provision.
- (2) If specified in the service specification or SLA, the Provider owes the guaranteed availability of access to the cloud provision. If no availability has been agreed, the agreed availability is 95% on a monthly average.
- (3) The Provider is not responsible for disruptions in the availability of the cloud provision that occur due to causes that are beyond the responsibility or influence of the Provider.
- (4) Interruptions due to maintenance work are not considered a violation of the agreed availability of the cloud provision.
- (5) In the event of disruptions to the cloud provision, the Provider shall make reasonable efforts to restore the availability as soon as possible.
- (6) Details regarding maintenance and troubleshooting might be covered by the product specification or SLA.
- (7) The strict liability due to initial defects according to section 536a, paragraph 1 of the German Civil Code is excluded.

#### **5 Support**

- (1) The Provider grants certain contact persons of the Customer access to the Service Desk of the Provider.
- (2) The Customer may use the Service Desk to report disruptions of the cloud provision or errors in the contract software or to request certain additional services. The details are defined in the SLA.
- (3) The prerequisite for processing malfunctions or errors is that the report of the Customer is comprehensible and complete and the Customer supports the Provider with

information and diagnosis on the Customer's side upon request.

- (4) If it turns out that a malfunction or error reported by the Customer is not the responsibility of the Provider, the Provider is entitled to charge the Customer for the processing effort according to the then valid prices of the Provider based on time and material.
- (5) Reported faults are determined by the Provider according to Clause . 4 fixed. Reported errors of the contract software are processed by the Provider during the normal update cycle of the contract software.

## **6 SLA, Final Warranty**

- (1) If defined in the SLA, the Provider grants the Customer compliance with certain service parameters described in the SLA.
- (2) Insofar as this is defined in the SLA, the Provider grants the Customer a credit memo to future usage charges (hereinafter referred to as "Service Credits") if these service parameters confirmed in the SLA are not met.
- (3) Service credits must be requested by the Customer by the end of the month following the non-compliance with the SLA. Requested service credits are only credited towards future fees owed by the Customer for the same service. Service credits may not be assigned to third parties, reconciled with other payment obligations of the Customer, or disbursed.
- (4) The granting of service credits exhaustively regulates the warranty rights with regard to possible service disruptions regarding the cloud provision. Any other warranty rights are excluded, unless otherwise stipulated in Clause A.12.
- (5) The Provider processes disruptions in the cloud provision according to Clause . 4. Further claims for defects due to unavailability are excluded. If service credits are granted, they regulate the warranty according to Clause . (4) in conclusion.
- (6) The right of termination of the Customer due to non-granting of the contractual use is excluded, provided that the production of the contractual use is not considered to have failed. The manufacture of the contractual use shall be deemed to have failed at the earliest after the unsuccessful second attempt.
- (7) If the Customer is aware of the defect at the time of conclusion of the contract, he is not entitled to claims for defects.

## **7 Obligations of the Customer**

- (1) The Customer is obliged to:
  - a. protect user accounts from misuse and immediately inform the Provider if there is a suspicion that unauthorized persons may have been disclosed;
  - b. comply with the restrictions regarding the granted rights of use of the contract software and prevent violations by means of appropriate organizational and technical measures;
  - c. ensure that they have all rights to the Customer data required for the processing by the contract software and that these do not infringe the applicable law or the intellectual property of a third party;
  - d. ensure that they only use the software Providers to the agreed extent and the agreed licensing and report a sublicensing to the Provider.
  - e. update the access app or contract software installed by the Customer, if applicable.

- (2) The Customer is not authorized:
  - a. to gain access to unauthorized modules or functions of the contract software;
  - b. perform cloud deployment tests without prior consultation with the Provider Penetration.
- (3) The Provider is entitled to charge the Customer separately for any additional expenses incurred by the Provider due to the Customer's failure to provide cooperation services on time, incompletely or incorrectly.

## **8 Termination of Contract**

- (1) When the runtime ends, all authorizations of the Customer and its authorized users automatically end.
- (2) The Provider will delete the Customer data one month after the end of the cloud provision, unless statutory requirements for deletion prevent this from being done, which has to be communicated by the Customer immediately upon termination. The Customer is obliged to export and secure the Customer data independently in time before the end of the cloud provision, insofar as this is possible by means of the functionality of the contract software, or to commission the Provider with the extraction of the Customer data subject to remuneration.

## **9 Usage Analysis**

The Customer agrees that the Provider and Company of the proALPHA Group may collect, collect and analyze information obtained from or about the use of the contractual services by the Customer for the purpose of product development and pass it on to third parties, and may use it in a combined form that does not identify the Customer or other persons for industry analyzes, performance comparisons and analyzes.

## **E. Hardware**

### **1. Delivery of hardware**

- (1) The scope, type and time of the delivery of hardware is determined by the quote. Hardware delivery is subject to availability. The Provider reserves the right to replace substantially equivalent hardware.
- (2) Hardware is sent to the Customer's ship-to address at the Customer's risk and expense.
- (3) In case of a hardware purchase, all delivered goods remain the property of the supplier or their supplier until the purchase price has been paid completely.

### **2. Hardware Purchase**

- (1) Complaints due to incomplete or incorrect delivery or notice of defects must be reported by the Customer in writing immediately, but at the latest within two weeks of delivery (in case of obvious variances or defects) or discovery (in all other cases). Claims for defects are excluded if complaints or complaints are not notified in time.
- (2) Claims for minor or minor defects (e.g. pixel errors in displays) are excluded.
- (3) Defects of a part of the delivered goods do not entitle the Customer to complain about the entire delivery or the entire contractual relationship regarding the services.
- (4) In case of transport damages, the Customer has to transmit a determination of damages by rail or mail or a determination of damages by the transporter, carrier or freight forwarder.

- (5) The Provider is not liable for improperly made changes and repairs to the hardware by the Customer or a third party.
- (6) The claims for defects in hardware become statute-barred within twelve (12) months after the transfer of risk

### **3. Hardware Rent**

- (1) The rental price and the rental duration result from the quote.
- (2) The strict liability due to initial rental defects is excluded from section 536a, paragraph 1 of the German Civil Code.
- (3) The Customer shall treat the rented hardware with the care that they apply in their own affairs. They must adequately instruct and train the users of the rented hardware or otherwise ensure that they use the rented hardware to the usual extent.
- (4) The Provider can mark the rented hardware as his property by means of reasonable labeling. The Customer may neither remove nor change this marking nor manufacturer references, serial numbers, seals, software license references etc. without the prior consent of the Provider.
- (5) The Customer shall immediately report defects and damages to the rented hardware to the Provider.
- (6) After the end of the rental period, the Customer shall return the rented hardware including all accessories to the Provider. The Provider will not back up the data and delete or destroy the storage after the return. It is the Customer's responsibility to make backup copies of any data stored on the rented hardware prior to the return and to transfer the hardware with deleted memory.

## **F. Consulting Services**

### **1. Service provided by the Provider**

- (1) The Provider shall provide the consulting services described in the Contract in accordance with the generally accepted rules of technology at the time of the service. In general, dates are non-binding budgeted values which the Provider informs the Customer based on experience with similar tasks. The situation is different only if the Parties explicitly agree on a specific delivery date and service date as a binding date.
- (2) If the on-time provision of services by the Provider requires certain cooperation services of the Customer, agreed delivery dates and service dates are postponed accordingly if the Customer does not provide the required cooperation services on time, not completely or incorrectly. Further rights of the Provider remain unaffected.
- (3) Insofar as the service provision does not necessarily require the on-site service of the Provider or the Parties have not expressly agreed in writing on-site service of the Provider in individual cases, the Provider is entitled at its own discretion to provide consulting services also from the respective workplace of the employee performing the respective work for the Provider. Insofar as the Provider is entitled to use subcontractors according to the provisions of these Terms or the agreements in a contract, these regulations shall apply to the services to be provided by the subcontractor accordingly.
- (4) If the subject matter of a contract is the programming of an interface or the programming of another computer program to be developed for the individual requirements of the Customer, the delivery and provision of the

respective interface or the respective computer program is performed in the object code.

### **2. Changes in performance**

- (1) If the Customer requires the Provider to change or supplement the scope of services agreed on in the Contract ("Change Request") after the conclusion of the Contract, the Provider shall examine this request within a reasonable period of time and inform the Customer whether and under which conditions the Provider is willing to implement the change request requested by the Customer.
- (2) If the verification of a change request of the Customer requires a precise analysis of whether and how the Provider can implement the desired change request of the Customer, the Provider shall inform the Customer of this together with the relevant remuneration for such analysis. If the Customer then wishes to commission the Provider with the analysis, the Parties shall conclude a corresponding written agreement, to which the present regulations of these Terms shall apply in the same way as for the original contract, the scope of services of which shall be changed by the change request.
- (3) Prices for a change request of the Customer depend on the prices agreed on by the parties in the contract.

### **3. Personnel required by the Provider**

- (1) The personnel employed by the Provider is exclusively subject to the instructions of the Provider. The Customer shall not be entitled to issue technical or disciplinary instructions to the personnel of the Provider.
- (2) If required, the Provider may replace an employee employed by the Provider at any time at their own discretion.
- (3) The Customer may only demand the replacement of a person assigned by the Provider to perform the contract if this person has clearly violated essential contractual obligations of the Provider during the performance of the contract and cannot be expected to behave in conformity with the contract in the future.

### **4. Termination**

- (1) A proper termination of consulting services before the complete contract execution is excluded.
- (2) Any extraordinary notice of termination must be given in writing. Text format is not sufficient.

### **5. Delivery, acceptance**

- (1) Insofar as the subject matter of the contract is the creation of a certain deliverable by the Provider, the delivery to the Customer shall be performed in accordance with the agreements defined here.
- (2) The Provider will inform the Customer about the provision of the deliverable for acceptance. Upon receipt of the notification of provision, the Customer shall immediately check the services rendered.
- (3) If deviations of the deliverable to be accepted occur in the course of the acceptance tests compared to the target condition agreed in the contract, the Customer will log these deviations and report them to the Provider.
- (4) The Customer may only refuse the required acceptance if the contractual use of the deliverable to be accepted is not possible or severely impeded and there is no patch, hotfix or reasonable possibility of circumvention.



- (5) The Provider has to eliminate errors that prevent the acceptance and then provide the deliverable to the Customer again for acceptance. The above provisions shall apply to this new acceptance accordingly.
- (6) If there are no errors preventing acceptance, the Customer is obliged to declare acceptance of the provided deliverable. In doing so, the Customer may expressly reserve the right to correct the errors undisputed in the acceptance report which are not impeding the acceptance, in his acceptance declaration. Acceptance is also deemed to have been granted if the Provider provides the Customer with the deliverable for acceptance in accordance with the contract and the Customer does not accept it within a reasonable period of time defined by the Provider, although the Customer is obliged to do so.

## **6. Rights to deliverables**

- (1) With full payment of the agreed remuneration for the consulting services rendered, the Customer receives a simple and permanent right to use the respective work results as intended.
- (2) The Customer is entitled to reproduce a computer program developed individually for him to the extent necessary for the proper use. In addition, the Customer is entitled to make the backup copies required according to the generally accepted rules of technology. Any reproductions beyond this must be granted by the Provider in advance. The Customer shall be obliged to adopt any intellectual property rights notices of the original in unaltered form with each reproduction.
- (3) If the computer program developed by the Provider individually for the Customer is an interface or functional extension to a standard software program, the Customer may use the respective computer program to the same extent as the respective standard software program.
- (4) The Customer is not entitled to distribute work results or to grant sublicenses to third parties for the work results, especially not by means of renting, borrowing or leasing.
- (5) Until the agreed remuneration for the consulting services provided has been paid in full, the Customer shall only acquire a temporary right to use the work results transferred by the Provider, which may be revoked by the Provider, in accordance with the intended use. The Provider is only entitled to exercise the right of withdrawal if the Customer is in arrears with the payment of the agreed remuneration. The exercise of the right of withdrawal does not imply a withdrawal from the contract.
- (6) If third parties enforce the enforcement of the property of the Customer before the Customer has paid the agreed remuneration in full, the Customer shall be obliged to explicitly inform the third parties concerned and the bailiff of the reservation of rights during this time and the Provider's right of withdrawal.

## **7. Remuneration**

- (1) Consulting services are provided by the Provider on a time and material basis at the prices valid at the time of conclusion of the contract. Material expenses have to be paid separately by the Customer at the rates specified in the quote. Waiting times of the Provider's employees, for which the Customer is responsible, are remunerated like working hours.
- (2) A daily rate specified in the Provider's quote or other documents defines the price for an employee employed by the Provider for eight (8) working hours on a workday

(Monday to Friday, except for holidays in the Federal Republic of Germany) in a time frame from 9 am to 5 pm (hereinafter referred to as "regular working hours"). If, at the Customer's request or on the basis of an agreement in the contract, the Provider performs additional work on a workday or works outside the regular working hours, the work performed by an employee employed by the Provider during these hours is charged at the following markups on the relevant daily rate:

- a. If more than 8 hours of work are done on a workday or work outside regular working hours, the additional work and working hours outside regular working hours are calculated with a 50% surcharge on the relevant daily rate;
  - b. Work on Saturdays (except for national holidays in the Federal Republic of Germany) shall also be charged with a surcharge of 50% on the relevant daily rate;
  - c. Work on Sundays and holidays is charged with 100% surcharge on the relevant daily rate.
- (3) The Customer shall be charged for consulting services on the basis of the service provided. Unless agreed otherwise, the settlement for longer-term projects is performed monthly at the end of a service month.

## **8. Effort estimates**

Effort estimates of the Provider are non-binding budgeted values which the Provider has determined based on the information and requirements of the Customer known from the effort estimate according to the experience gained from comparable tasks.

## **9. On-Call Duty**

- (1) If, during the performance of an Contract for Consulting Services, the Customer requests that the Provider support the Customer outside the regular working hours in the event of disruptions occurring in the contractual use of the Consulting Services provided by the Provider, the Parties may agree on on-call duty in the Contract. This on-call duty ends no later than the termination of the Consulting 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 the Provider 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 the Provider shall be established via a phone number communicated to the Customer in writing the Provider.

## **10. Defects in deliverables**

- (1) If the subject matter of the consulting services to be provided by the Provider is a deliverable to be created for the Customer, this deliverable is free of defects if it has the agreed target quality. The contract and the other provisions of these T&C define the target conditions agreed on by the parties. If a deliverable deviates from the agreed target condition, the Customer is entitled to demand subsequent performance from the Provider within a reasonable period of time. However, the Customer's right to subsequent performance shall not apply to deviations from the agreed target conditions which are based on incorrect or incomplete information of the Customer, on use contrary to the contract by the Customer, on unauthorized changes to the deliverables

- by the Customer or by a third party commissioned by the Customer or on other circumstances which are not the responsibility of the Provider (e.g. due to malfunctions of upstream or downstream IT systems of third parties).
- (2) The Customer shall immediately report any defects in the deliverables created by the Provider as of the date of their notification. In the complaint, the Customer shall describe the defect and the accompanying circumstances under which the defect occurred in a manner necessary for the analysis and limitation of the defect. In addition, the Customer shall immediately provide the Provider with any additional information required by the Provider to analyze and filter the defect upon receipt of the complaint.
- (3) If subsequent performance is objectively impossible, or if the Provider seriously and definitively refuses the justified subsequent performance, or if the subsequent performance fails within a reasonable period for reasons for which the Provider is responsible, the rights of the Customer shall be determined by law due to a defect in the quality of a deliverable created by the Provider. Insofar as the Provider is obliged to compensate for damages or expenses, the liability limitations agreed in these Terms shall apply.
- (4) In order to investigate and/or remedy a defect which is not actually attributable to the Provider, the Provider may demand compensation from the Customer on a time and material basis on the basis of the then valid prices of the Provider, unless the Customer could not recognize at the time of the notification of the defect, even if the required care was taken, that the defect reported by the Customer was precisely not a defect.
- (5) The rights of the Customer due to possible defects of title of the consulting services provided by the Provider and the work results created for the Customer in this context shall be determined conclusively according to the provisions on intellectual property rights violations.
- (6) Claims of the Customer due to a defect in a deliverable created by the Provider in the context of the provision of consulting services become statute-barred within one (1) year after delivery. If the parties have agreed in the contract on the acceptance of the deliverable by the Customer or if the deliverable is to be accepted by the Customer on the basis of statutory provisions, the limitation period shall begin with the acceptance, by way of derogation from sentence 1 above.
- (7) By way of derogation from the above paragraph, claims for defects in work results that the Provider creates for the Customer in the context of the provision of consulting services shall become statute-barred in the regular statutory limitation period if the Provider fraudulently conceals a defect or has assumed a guarantee for the missing quality. The regular statutory limitation period also applies if a defect in the deliverable created by the Provider causes damage which the Provider has caused intentionally or with gross negligence or which damages the life, body or health of a person. Any further claims of the Customer due to defects in the deliverables according to the Product Liability Act shall also remain unaffected by the statute of limitations agreed on here.
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