

PROSTEP

General Terms and Conditions for Projects

§ 1 Subject Matter of Project

1.

The subject matter of the contract is the rendering of the Services described in detail in a quotation of PROSTEP AG or an Exhibit Services Provided and the granting of the rights of use pursuant to § 4.

2.

The performance of the project is exclusively subject to the provisions of the Project quotation or the Exhibit Services Provided and the following General Terms and Conditions for Projects. Deviating contract terms and conditions (e.g., terms of delivery, terms of payment) of Customer do not form part of the contract, including cases in which PROSTEP does not expressly object to them.

3.

Modifications and amendments of the following Terms and Conditions for Projects, the Project quotation or the Exhibit Services Provided must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory written requirement.

4.

Representations in evaluation programs, functional specifications, product descriptions and the like do not constitute a guarantee. Such guarantees require the express written confirmation of PROSTEP.

5.

These terms and conditions additionally apply to all future projects in their recent version also not expressly indicated hereon.

§ 2 Functional Specifications

1.

The Customer is initially responsible for creating a workbook. Customer is responsible for preparing the functional specifications. Customer shall be responsible for ensuring that the functional specifications are complete, error-free, and adequate for its business requirements. PROSTEP can inspect the workbook only with respect to the technical feasibility and the lack of conflicts.

2.

If PROSTEP should discover errors or inadequacies, PROSTEP will advise Customer thereof. Customer shall immediately make the necessary corrections and/or amendments. PROSTEP shall review these corrections and amendments, and notify Customer –if the parties have agreed on that – in writing of any implications regarding the project schedule and remuneration.

3.

If the object of the contract is an installation, configuration or the operation of PROSTEP standard software, an implementation workshop must be carried out with the Customer before the implementation of the project, in which the infrastructure and configuration conditions for the project are bindingly determined by both parties to be documented in writing. The costs incurred by the Customer shall be borne by the Customer insofar as the parties have agreed otherwise.

4.

If the parties agree that PROSTEP shall assume the preparation of the functional specifications due to § 2 No. 2, PROSTEP and Customer shall jointly prepare this document. After the completion and submission of the functional specifications, Customer has 10 working days to inspect the functional specifications. The objective of the inspection is to verify whether all business or other relevant requirements of Customer have been fully covered and are error-free and whether all information is correctly documented. Customer shall review the IT-specific contents of the functional specifications to the extent that he possesses sufficient knowledge and expertise. Customer shall immediately notify PROSTEP in writing of any inadequacies, errors, and omissions, and grant PROSTEP an opportunity for remedy. When Customer is satisfied with the functional specifications, it shall immediately accept them with its signature. The acceptance is also deemed to have occurred if Customer fails to object to the contents of the functional specifications by providing reasons in writing within the above mentioned period of time.

5.

If Customer submits modifications and extensions related to the functional specifications prepared due to § 2 No. 4, § 3 applies accordingly, provided that either of the parties may terminate the agreement in writing and without prior notice if the parties are unable to reach an agreement on the adjustment of budget and schedule, and technical aspects. The same applies, if Customer does not make the necessary corrections and/or amendments which are required due to § 2 No. 2, or if thereupon no agreement on the adjustment of budget and schedule, and technical aspects can be reached between the parties. In this case, PROSTEP will invoice Customer for the preparation of the functional specifications. Upon termination, Customer may use the functional specifications in the realization of the intended software project for its own operations. Any transfer to third parties is impermissible, unless it is for the above mentioned purpose. Amendments and modifications are permissible only to the extent that they are required for the realization of the project for Customer's operations, although not, for example, for the purpose of distribution. Third parties shall be advised of these restrictions and the duty of confidentiality in favor of PROSTEP as provided in § 13.

§ 3 Change Request Procedure

1.

Customer may submit change requests (requests or proposals for modifications and extensions) during the implementation through the completion of the project. PROSTEP shall advise Customer in writing within a reasonable period whether and to what extent this will affect the project schedule or budget, and whether the changes are technically feasible. Customer shall notify PROSTEP within 5 working days, if he agrees with the budget and project schedule changes. The proposed changes shall be deemed accepted if Customer does not respond to the request within the given period of time and PROSTEP will implement the modifications or extensions with the scope of the project. PROSTEP indicates to Customer, that a fast response is required to avoid Project delays or possible additional costs through project down time.

2.

To the extent that the examination of the change request by PROSTEP exceeds a one-day time limit, Customer shall compensate PROSTEP on a time and materials basis, upon request of PROSTEP. If applicable, PROSTEP shall submit a quotation for the work involved.

3.

PROSTEP is only obligated to comply with the change requests, if the parties are able to reach an agreement on the adjustment of budget and schedule, and technical aspects. If PROSTEP itself proposes modifications, Customer shall notify PROSTEP in writing within a reasonable period whether it wishes this change request to be implemented. However, PROSTEP has the right to implement the modifications without the explicit consent of Customer, provided that no adverse effects are incurred by Customer with regard to time, budget, or technical aspects, or if the modifications and extensions are required, because the information provided by Customer in accordance with § 2 No. 1 to 3 contained errors or were incomplete and this did not become apparent until after the project had started. Prior to the implementation of the modifications and extensions, PROSTEP shall notify Customer pursuant to § 3 No. 1 sentence 2. If, in other cases, the parties are unable to reach an agreement on the requested modifications and extensions, the performance of the remainder of the agreement shall remain unaffected.

4.

Furthermore, PROSTEP may suspend the project implementation during the negotiations on modifications or extensions until the parties have reached an agreement, to the extent that it stands to expect that services provided will otherwise be unfit for use. PROSTEP shall notify Customer thereof prior to suspending supplies and services.

5.

If during the implementation of the project, it occurs that modifications or rework must be performed due to incorrect or incomplete specifications provided by Customer, Customer shall compensate PROSTEP the resulting costs and other resulting additional expenses, which will be charged at the rates that are in effect at that time.

6.

If the change requests submitted by Customer extend the scope of the project significantly, PROSTEP may restrict the further implementation of the services on the conclusion of an additional project contract, which might be implemented after completion of the first/actual/running project.

7.

All notices related to the above mentioned regulations/conditions, (change requests, budget or project schedule information, approvals etc.) may be in writing or by e-mail.

§ 4 Rights granted

1.

As between the parties, PROSTEP reserves all rights in the Software and Customizing Solutions developed or customized in the course of a project. This shall also apply to Software or Customizing Solutions created in co-operation with or at the suggestion of Customer. PROSTEP shall grant to the Customer the non-exclusive rights, which shall be unlimited in terms of time, in accordance with § 4 No. 2 to 7.

2.

The Software shall only be used for internal purposes at the Customer location set forth in the Project Agreement. A change of location requires the prior written consent of PROSTEP, which may only be withheld for valid reasons. Upon request, the Customer shall confirm in writing that no copies of the Software are kept at the prior location.

3.

At the time of delivery or installation of the Software, the Customer shall be granted access to the electronic software delivery portal of PROSTEP AG and shall download the Software from here. The right to use the Software shall be set out in the Customer quotation.

4.

All other types and possibilities of using the Software (that are relevant in relation to copyrights) shall be prohibited. Any use by or on behalf of Customer's affiliates requires express written consent. Data centre services and other online services for third parties are prohibited. The distribution of the Customer specific solutions is not permitted.

5.

The Customer shall be permitted to decompile the Software only insofar as this is necessary for obtaining the interoperability of the Software with third-party-software and hardware (e.g. for obtaining the interface information) and only if PROSTEP does not provide the necessary information for an appropriate remuneration and within a reasonable period of time to the Customer upon written request.

6.

Additional restrictions or rights which amend the here defined rights may be defined in the quotation.

7.

Transferring the Software to Third Parties shall require the written permission of PROSTEP. The permission shall be granted if the Customer definitely and completely waives their own legal status regarding the Software and prior to the transfer submits a written commitment of the third party to accept PROSTEP's regulations regarding rights of use and confidentiality requirements. The acquirer shall not be entitled to derive any claims from this permission against PROSTEP based on a contract or another legal provision. Splitting the rights of use pursuant to the license certificate shall not be permitted. The Customer shall confirm vis-à-vis PROSTEP in writing after the transfer that the Customer no longer possesses the Software or copies thereof or reuses any possible backup copies.

8.

The Customer shall receive the following delivery contents of the Software for the purpose of exercising their rights:

- machine program;
- manual in digital form.

Customer shall not be entitled to claim the release of the source code.

9.

PROSTEP shall be solely entitled to all rights to other work results that may be subject to copyright and that PROSTEP submits to the Customer within the scope of the performance of the contract; this shall also apply if they have arisen on the basis of cooperation or a suggestion of the Customer. The Customer shall receive the non-exclusive permission, which shall be unlimited in terms of time, to use and to process these for internal purposes in connection with the contractually granted right to use the software. Provided that the work results that are subject to copyright are independent of the software, the Customer shall be permitted to use and process them only for internal purposes. Sale is not permitted.

10.

With respect to copy right of work results (software, alteration of Software; customized solutions etc.), which are related to software provided to Customer due to an agreement for the licensing or usage of software, the PROSTEP Software Terms and Conditions apply accordingly.

11.

The rights to the standard software of PROSTEP and any other standard software underlying the software solutions developed in the course of this project or used by PROSTEP in rendering the Services remain unaffected by the above terms and conditions. The rights in the standard software of PROSTEP are solely governed by the Licensing Agreement or the Agreement for the Usage of Software concluded between PROSTEP and Customer and the related Terms and Conditions (ref. to par 10); in the absence of a separate License Agreement or Agreement for the Usage of Software, the rights in the standard software are subject to the provisions of the license terms and conditions contained in the Project Agreement or quotation. The grant of the rights of use pursuant to the above terms and conditions does not imply any extension of the right of use to and in the underlying standard software.

12.

In the event that PROSTEP offers third-party Software to the Customer, the contract terms of the third-party software manufacturers or suppliers, respectively, which shall be provided to the Customer for inspection at any time; alternatively, PROSTEP shall also be permitted to provide the internet address from which the terms may be retrieved to the Customer.

§ 5 Remuneration and Payment

1.

Unless the parties explicitly agree otherwise in writing, PROSTEP will invoice its services on a time and materials basis. If a total amount is indicated for the project remuneration, this shall only be an estimated price, unless the parties agree otherwise in writing. Unless explicitly agreed upon otherwise PROSTEP will invoice the services on a monthly basis.

2.

The calculation of the estimated price – or if individually agreed upon the fixed price - is based on the assumption that PROSTEP will be able to perform any work to be done at Customer's site during the regular working hours (i.e., Monday through Friday 8.30 a.m. – 5.30 p.m., excluding public holidays). Therefore, supplements for work to be done outside the regular working hours, in particular, on weekends, are not included in this price.

3.

The compensation is subject to the statutory value added tax that is valid at that time. Invoices shall be due for payment within fourteen (14) days after their receipt with no deduction.

4.

If Customer is in default with its payments, PROSTEP may claim interest on payments in the amount provided in statutory provisions. PROSTEP may also stop the further accomplishment of the contractual services, until Customer complies with his payment obligations. PROSTEP shall advise Customer thereof prior to suspending supplies and services. Customer shall not offset claims, unless its counterclaims are undisputed or have become res judicata. Customer shall assign claims against PROSTEP only with the prior agreement of PROSTEP.

5.

In case Customer is entitled to use the delivered Software according to § 4 prior to receipt of full payment, PROSTEP reserves the right to revoke the rights granted, in case of a default in payment of more than 6 weeks or if Customer finally refuses to make payments or becomes insolvent. If the rights are revoked, Customer shall promptly delete or return the Software and any copies thereof and upon request of PROSTEP, confirm the deletion and return in writing.

§ 6 Technical Pre-Requisites; System Requirements

1.

Error analysis and remediation as well as other contractual services shall be effected via telephone, Email and – if between PROSTEP and Customer agreed upon - via remote data transmission. Customer shall be responsible at its expense, for setting up and maintaining a remote data transmission facility for the entire agreement period including the limitation period for material defects and defects of title. Customer shall assume the telecommunication charges. PROSTEP will only use this remote data

transmission after prior agreement with Customer; furthermore the regulations of § 13 with respect to data protection shall apply. Customer may terminate the remote data transmission at any time; risk and responsibility for the termination and emerging additional costs bears Customer. In case the access via remote data transmission is not available PROSTEP will perform error analysis and removal if required at the Customer site. These on-site services will be invoiced separately at the PROSTEP rates that are valid at that time.

2.

It is Customer's duty to set up and maintain the technical conditions, e.g. the system environment on its own expense.

3.

PROSTEP expressly advises Customer that changes in the system environment (also with respect to changes in the Third-Party Software) may adversely affect or impede the functionality of the Software. PROSTEP is willing to restore the functionality under a separate agreement for compensation on a time and materials basis, provided that the technical conditions are met. The same applies to the ongoing development of the system environment (e.g., in connection with the maintenance of third party software).

4.

In addition, PROSTEP warns Customer that remote access may create a gap within the data security of the Customer's system. PROSTEP will take reasonable state of the art safety precautions when accessing Customer environment.

§ 7 Customer's Duty to Co-Operate

1.

The complexity and individuality of the Software requires extensive co-operation between Customer and PROSTEP. Customer shall contribute to the implementation of the project services free of charge by rendering the services (including troubleshooting) set forth in par. 2 through par. 9.

2.

Customer shall make available to PROSTEP any information required for the implementation of the project (e.g., business processes, existing hardware and software environment, data structures) in a timely manner and without being requested. This duty also covers the provision of data by Customer, i.e., test data, but also productive data of an appropriate quality and quantity that PROSTEP may need for the implementation of the project. The parties shall agree on the data carriers and data formats.

3.

Customer shall ensure that PROSTEP is always granted access to all facilities during regular business hours, and upon agreement as well access to the hardware and software existing at the Customer's site, to the system administration and to the Customer's data (also upon agreement via remote access) , to the extent required for the execution of the Services. PROSTEP shall comply with the house regulations of Customer. To the extent the rendering of the Services is impaired or delayed due to this compliance (e.g., due to security regulations or company-wide holidays) the Customer is responsible for the impairment or delay.

4.

To the extent required in the implementation of the project, Customer shall make documentation, software, and licenses, or any other records pertaining to third-party products utilized for the services to be rendered, that are required in the performance of the agreement, available to PROSTEP. To the extent that the functional specifications or any contract document stipulates requirements for systems that are operated or are to be provided by Customer or any third party, Customer shall ensure that these requirements are met.

5.

With regard to copyrightable records, programs, and any other material made available by third-party manufacturers, Customer shall ensure that Customer is authorized to provide these items to PROSTEP for use, to the extent required, in the project implementation and the creation of the work results. Customer shall indemnify and hold PROSTEP harmless from and against any claims that any thirdparty may assert against PROSTEP due to the absence of such authorization.

6.

Customer shall ensure that during the performance of the overall project, the necessary number of competent employees of Customer who are familiar with the project is continuously available to PROSTEP at all times for technical information and questions.

7.

If the project services are performed by PROSTEP at Customer's site, Customer shall provide appropriate facilities equipped with sufficient office communication equipment and the IT systems required for the implementation of the project.

8.

The Customer shall perform a data backup at regular intervals – no less than once a day – and prior to any interference by PROSTEP with existing IT systems. The Customer is obligated to take appropriate measures to ensure that unauthorized third parties cannot have access to its hardware and software environment. PROSTEP will notify the Customer in good time of any system intervention carried out by PROSTEP, in order to give it the opportunity to check its hard- and software environment and adjust it if necessary.

9.

Error analysis, processing and removal are only possible, if the appointed project managers and their deputies and appointed system administrators deliver qualified error messages, which shall always contain the following information:

- information about the software and hardware environment on the Customer site; status of the installation and respectively changes of the installation/configuration (if they are not known by PROSTEP). This may involve changes of systems which are integrated with the Software or might be called by the Software
- detailed error descriptions with the relevant error codes, and where required the problem files, configuration files, extracts of the job data base and others.

10.

If Customer does not comply with its duty to co-operate in an orderly, proper form and in a timely manner, PROSTEP may invoice the resulting costs or the additional required effort at the rates that are valid at that time.

§ 8 Project Manager and Project Management Team

1.

The designated project managers and if applicable their deputies form the project management team. They are the respective contact persons for the parties and are either authorized to make all decisions regarding the implementation of the project, or shall arrange for the necessary decisions to be made without delay. The parties shall inform each other in writing in case of a change of the designated contact persons. The project manager and his deputy are authorized to accept and issue project relevant statements on behalf of the Customer.

2.

To the extent that services are performed at Customer's site, PROSTEP has the exclusive right to issue directions to its employees. The employees do not become a part of Customer's business operations. Customer is not authorized to issue directions directly to individual project workers.

3.

The project management team shall jointly ensure the progress of the project. To this end, project meetings shall be held at regular intervals (in the absence of other provisions, no less than at a minimum of every four weeks) and the team members shall inform each other on a regular basis in accordance with established criteria (such as project status, agreed milestones, quality, perceivable trends, risks, and problems). The project managers or their deputies shall attend the project meetings and request other project workers to attend the meetings, to the extent that is expedient for the items discussed in the project meetings. In addition, either party may request a project meeting to be held at any time, if this appears to be beneficial to the implementation of the project.

4.

PROSTEP shall in accordance with par. 1 prepare minutes of any project meeting which it submits (in writing or by e-mail) to Customer. The minutes of the meeting shall become binding, unless Customer objects to them in writing, stating a reason, within five working days. The same applies to other minutes which were submitted (in writing or by e-mail) to Customer by PROSTEP.

§ 9 Acceptance

1.

The acceptance of the documented work results and any other documentation to be supplied shall be granted at the time of transfer and is recorded in the acceptance report. The acceptance is deemed to

have been granted if Customer does not object to the documentation of the work results or other documents within a period of five working days starting from the date of transfer. For functional specifications the rules set forth in § 2 apply.

2.

If, in the course of the project, Software is created or adapted (including under a Customizing Agreement), PROSTEP shall perform an operability test immediately upon completion of the Services, after the readiness for service has been announced. During this operability test, PROSTEP shall demonstrate the proper functioning. PROSTEP shall prepare an acceptance report on the operability test. If, during the operability test, no errors of error category 1 and 2 occur, Customer shall declare its acceptance of the supplies and services with its signature.

3.

Errors belonging to category 1 and 2 shall immediately be removed by PROSTEP, and upon completion, a new operability test shall be conducted. Category 3 errors shall be documented in the acceptance report and shall be removed in accordance with § 12. The claim for the removal of insignificant errors (that are category 4 errors which constrain the usability of the overall System only minor) does not exist.

4.

Errors will be categorized as follows:

Category 1: Errors preventing operation:

Errors leading to repeated system crashes or not only momentary system downtime, data losses, data inconsistencies and thus prevent an economical usage of the overall System by Customer.

Category 2: Errors that substantially impair operations

Severe errors or severe discrepancies of the agreed functionality, which prevent the usage of the overall system or single system modules over a longer period significantly and thus result in a relevant not just short term limitation of the overall System's economical usage by the Customer and for which a reasonable workaround does not exist.

Category 3: Errors impairing operation with temporary workaround

Errors according to priority 2, with a temporary circumvention of the error by reasonable manual intervention or provisioning of a temporary software solution.

Category 4: Other errors

Errors which constrain the usability of the overall System not or just minor.

Different error categories may be defined in connection with the preparation of the functional requirements.

5.

If, for reasons attributable to Customer, it is impossible to perform the operability test on the established date, Customer shall, within ten working days, mutually agree with PROSTEP on a new date. If, for reasons attributable to Customer, this does not happen, within the ten working days period, the software is deemed to be accepted (implied acceptance).

6.

Customer shall be responsible for providing the appropriate data for the operability test. If Customer fails to comply with this duty, PROSTEP shall conduct the operability test with its own test data.

7.

An economically reasonable use of the software by Customer is deemed an acceptance (implied acceptance), provided, however, that no category 1 and 2 errors are reported within 15 working days after commissioning.

8.

PROSTEP may claim acceptance for individual project deliveries as listed in the functional specification, or if not explicitly listed in the specification for individual complete project deliveries. The limitation period for material defects and defects of title, which are identifiable during the acceptance process, shall begin to run upon acceptance of the individual project deliveries. For defects which are identifiable only by the collaboration of all project deliverable the limitation period shall run upon the final acceptance.

§ 10 Project Schedule; Default in Supplies and Services

1.

The parties shall agree on a project schedule for the project.

2.

PROSTEP is unable to meet the agreed dates, unless Customer complies with any and all of its duty to co-operate. In the event of modifications and extensions and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which PROSTEP is not responsible (e.g., force majeure, labor unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

3.

The start and end times specified in the project plan are displayed as continuous. Should there be an interruption within the timeframe for which the Customer is responsible, the Customer is obliged to pay PROSTEP 50% of the agreed day rate according to the PROSTEP price list for each full day of the interruption until the project is resumed.

4.

If PROSTEP is in default, Customer shall initially grant a reasonable grace period in written form for the provisioning of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the agreement upon ineffective expiration of the grace period set forth in writing or claim damages in lieu of the Services or a reimbursement of expenses, Customer shall announce this intention in the letter stipulating the grace period.

§ 11 Material Defects and Defects of Title

1.

PROSTEP shall initially perform its warranty obligations for material defects and defects of title by remediation. In the case of material defects, remediation shall mean, at the option of PROSTEP, the removal of the defect or the supply of an error-free program version or other error free work results. If the use of the Software, as contemplated in this Agreement, is restricted due to defects of title (e.g., because third parties claim rights in or to the Software), PROSTEP shall discharge its re-performance obligation by securing the use of the Software as contemplated in this Agreement, at the option of PROSTEP, by defending against or settling these rights or by the respective modification of the Software. PROSTEP may, in its discretion, directly handle the dispute against the third party in court or extra-judicially on behalf of Customer. In connection herewith, Customer shall assist PROSTEP free of charge to a reasonable extent.

2.

Customer may terminate the contract upon the expiration of a reasonable time limit set by Customer in written form, which allows several attempts of remediation. Claims for damages and the reimbursement of expenses are governed by § 14. These are the exclusive remedies in case of material defects and defects of title.

3.

Due performance of warranty obligations by PROSTEP is, in case of material defects, subject to an immediate notice of defect by Customer in writing or by e-mail containing a detailed description of the defect according to § 9 par. 4. The report shall be made by the project manager or system administrator or his/her deputy. Customer shall co-operate with PROSTEP in the removal of the defect in accordance with § 7. In case of a defect of title, Customer shall immediately notify PROSTEP in writing about the claims to proprietary rights asserted by third parties against Customer and provide PROSTEP all relevant information and data.

4.

PROSTEP shall assist Customer with trouble-shooting, including in such cases in which it has not been determined that the error exists in the supplies and services provided by PROSTEP. If, during the trouble-shooting, it cannot be demonstrated that the errors that have occurred are due to the supplies and services provided by PROSTEP, PROSTEP shall invoice Customer for the expenses incurred on a time and materials basis. In connection herewith, PROSTEP draws Customer's attention to the fact that the system administrator must receive the relevant training.

5.

PROSTEP is not obligated to remove material defects and defects of title if the Software has been modified without the consent of PROSTEP, and Customer is unable to show that the material defect or defect of title is unrelated to this modification. The same applies if Customer itself makes customizing settings without obtaining the prior consent of PROSTEP. In addition, PROSTEP will not discharge any

warranty obligations as long as Customer uses the Software in violation of the restrictions of use contained in the quotation or the Exhibit Services Provided and in § 4 hereof.

6.

The limitation period for material defects and defects of title is - except in case of intentional wrongdoing - one (1) year and shall begin to run upon shipment, unless otherwise provided in the Installation Certificate.

7.

In case of defects of third party software or hardware which was provided by PROSTEP in the scope of this agreement, PROSTEP may on its option assign to Customer its claims against the supplier concerning this matter. In this case Customer shall only submit its claims against PROSTEP after the ineffective - if needed in court – handling of the dispute against the third party.

§ 12 Liability

1.

PROSTEP shall be liable without any limitation in the case of personal injuries as well as in other cases in which an unlimited liability is prescribed by law (e.g. in accordance with the German Product Liability Law, in cases of intent or gross negligence, and injury to life, body, or health).

2.

In cases of slight negligence, the liability of PROSTEP shall be limited to foreseeable damages that are typical for the contract, including consequential damages, with a limitation to the maximum amount of €500,000.00 per case of damage, however, up to a maximum amount of €2,000,000.00 for all damages within one contractual year.

3.

Deviating from section 2, PROSTEP shall not be liable for claims based on consequential damages, such as loss of profits, loss of use, or contractual claims of third parties.

4.

PROSTEP shall be liable for losses of data and information (except in cases of intentional acts) only if the Customer has performed system tests and data backups at regular intervals (at least once per day) and only if the data is reproducible from databases available in machine-readable form using reasonable efforts.

§ 13 Confidentiality and Data Protection

1.

The contracting parties shall undertake to treat as confidential all information, records, and data that they gain knowledge of in the course of providing the contractual services and not to make them available to third parties unless that is covered by the purpose of the contract. The Customer shall ensure by means of appropriate measures that third parties do not have access to the contractual software that is or to other records of PROSTEP. The contracting parties shall make their employees aware of the obligation to maintain confidentiality. PROSTEP shall be permitted to use know-how obtained during the performance of the contract for their business operations, particularly for the further development of the software, and thereby further develop any general techniques and concepts created in the course of this.

2.

PROSTEP and the Customer shall observe the provisions of the data protection law. PROSTEP shall process the data of the Customer electronically and shall observe the provisions of the data protection law. However, the Customer shall be responsible for protecting personal data before the commencement of the service provision in a way that unintentional access (i.e. access that is not required for the performance of the contract) by PROSTEP will not be possible. In other respects, it shall be the Customer's task to obtain the consent of the relevant employees, Customers, and business partners of the Customer as well as other persons concerned that are required under the data protection law. The Customer shall indemnify PROSTEP against all claims that these persons could assert against PROSTEP on the basis of the non-compliance with these obligations. This shall also apply to the possibility of accessing databases on site or via remote data transmission.

3.

The obligations to maintain confidentiality shall continue to apply during a period of five years after the termination of the contract.

§ 14 Termination

Each termination must be in writing to be effective. A termination for cause shall be threatened in writing, granting a reasonable period in which the reason for termination is to be removed, unless this may not be reasonably expected of the non-defaulting party in this instance. Cause for termination shall exist, but is not limited to the following events:

- violation of Customer's duties to co-operate
- Customer is in default with its payments for more than 6 weeks;
- the institution of insolvency proceedings against the assets of either party, or if their institution is declined for lack of assets.

§ 15 Jurisdiction and Applicable Law; final Provisions

1.

The place of performance shall be the principal office of PROSTEP. The place of jurisdiction regarding all disputes concerning the contractual relationship shall be the principal office of PROSTEP, provided that the Customer is a businessperson, a legal person under public law or a special fund under public law. The contractual relationship shall be governed by German law; the UN Convention on Contracts for the International Sale of Goods shall be excluded.

2.

In the case that individual provisions of these Software Terms and Conditions should be or become invalid or should the Software Terms and Conditions be incomplete, the validity of the other provisions shall remain unaffected thereof. If such a case occurs, the contractual partners shall attempt to reach a mutual agreement or a supplement regarding these items with the result that the intended economic purpose will be achieved in a legal way as well as possible. This provision shall apply with the necessary modifications also to gaps that require a supplementation.

3.

If these General Terms and Conditions for Projects should be translated into another language, the German version shall have priority in cases of deviations or interpretation difficulties.