PROSTEP
Software Terms and Conditions

The subject matter of the contracts shall be the purchase or lease of PROSTEP software as well as the conclusion of a maintenance or hotline contract.

A. General Provisions

A. § 1 Remuneration and Payment

1.
The remuneration for the purchase or lease of the software and / or the maintenance of the software and / or the conclusion of a hotline contract shall be set out in the specific customer quotation.

2.
The remuneration shall be understood as the net amount plus statutory VAT applicable in each case. Invoice amounts shall be paid within 14 days from the delivery of the software and the receipt of the invoice without any deductions.

3.
In the case that the customer is in delay of payment, PROSTEP shall be permitted to charge default interest at the statutory rate. PROSTEP shall also be permitted to suspend the further performance of the contractual services until the customer has complied with their payment obligations. PROSTEP shall notify the customer of this prior to suspending the performance of their services. The customer shall only be entitled to set off against payment claims that are uncontested or have become res judicata. The customer shall be permitted to assign payment claims against PROSTEP only with the consent of PROSTEP.

4.
Provided that the customer is entitled to already use the software prior to having completed the payment, PROSTEP shall reserve the right to revoke the granted rights of use in cases of delays in payment of more than six weeks, definite refusal of payment or inability to pay on the part of the customer. In the case of such a revocation, the customer shall delete or return without delay the software and all copies thereof or – if requested by PROSTEP – confirm in writing the deletion and return.

A. § 2 Further Development of the Software

1.
PROSTEP shall continuously develop the contractual software. Within the scope of the software maintenance, the customer shall receive new software versions with the following features:

- support of current operating system environments and product modules and those that are officially supported by PROSTEP;
- support of new versions of all connected / integrated third-party software products;
- higher operating comfort;
- more powerful versions;
- new functionalities, unless these are issued by PROSTEP within the scope of a new product;
- removal of software errors.

2.
The customer shall in each case receive the standard version of the new software versions and shall be solely responsible for integrating any possible customer-specific adjustments. PROSTEP is willing to perform the integration of these adjustments for a separate remuneration.

3.
A right to deliveries of new versions at regular intervals shall not exist.

4.
PROSTEP integration modules or PROSTEP connectors to third-party software shall be adjusted to minor releases of this third-party software as soon as possible within the scope of the software maintenance and upon the customer's request. As a general rule, minor release changes shall be changes of decimal places of the version number (e.g. changes from version 7.0.3 to 7.1 or 6.5 to 6.6), which do not affect the interfaces used by PROSTEP.

5.

In cases of major release changes announced by the manufacturer of the third-party software, PROSTEP shall reserve the right to not perform these within the scope of the software maintenance. If possible, PROSTEP shall announce this in due time within the scope of release notes. In that context, major release changes shall be generally characterised by a change of the first digit of the official release designation (e.g. a change from version 4.9 to 5.0). In addition, major release changes are characterised by one of the following features:

- change (discontinuation or change of functionalities used by PROSTEP and of access to the programming interface of the third-party software) of the API (programming interface of the third-party software);
- a new or substantially modified software core;
- a new or substantially modified user interface.

6.

In the case of an error removal performed by PROSTEP, the customer shall be obliged to install and use the new software versions / updates delivered by PROSTEP within three months after their delivery. If the customer uses the previous software version beyond this period of time, the customer's rights based on defects of quality and title shall lapse and the liability of PROSTEP in that regard shall be excluded, unless the error is included also in the newly delivered software version. When the customer starts using the new software version, they shall no longer be permitted to use the previous software version.

A. § 3 Changes of the Hardware and Third-Party Software Environment

1.

The customer shall maintain separate software and hardware servicing contracts for hardware and third-party software. The customer shall bear the responsibility for the fact that the servicing is sufficient for their needs. In cases of changes to the hardware and third-party software that are caused by maintenance and service, PROSTEP shall endeavour in each case to ensure compatibility of the PROSTEP software to third-party software and hardware within an appropriate period of time. The customer shall not be entitled to claim that the compatibility of new products of third-party software manufacturers shall be obtained within the scope of the software maintenance; this shall apply in particular if the system architecture, interfaces or data formats are changed. The adjustment of PROSTEP integration modules or PROSTEP connectors to changes of third-party software shall be performed as described in § 2, subsection 4.

2.

In cases of changes to the hardware and third-party software environment that are not caused by maintenance and servicing, PROSTEP is willing to support the customer for a separate remuneration at the currently applicable daily rates of employees of PROSTEP on the basis of a separate contract (e.g. connecting new software products or adapting to changed hardware architecture, customising of third-party software).

3.

PROSTEP shall make aware of the fact that changes of the hardware and third-party software environment (also within the scope of service and maintenance regarding this hardware and third-party software or within the scope of customising the third-party software) shall at all times be subject to coordination with PROSTEP, as these changes may result in a partial or complete failure of the functionality of the software that is covered by the respective contract and may substantially delay any error analysis or correction or make these impossible.

A. § 4 Rights

1.

In the relation between the contracting parties, PROSTEP shall be solely entitled to the rights to the software. PROSTEP shall grant to the customer the non-exclusive rights, which shall be unlimited in terms of time, in accordance with § 4, subsection 2 to subsection 11.

2.

The software shall only be used for internal purposes at the customer location that has been contractually agreed upon, and in accordance with the rights of use granted in the license certificate. The multiple use of a single license shall not be permitted. Any change of location shall require 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 the 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 there. The right to use the software shall be set out in the customer quotation.

4.

Any further duplication shall only be permitted for backup purposes within the scope provided by law. Backup copies shall be marked, as far as is technically possible, with the copyright notice of the original software.

5.

All other types and possibilities of use of the software (that are relevant in relation to copyrights) shall be prohibited. Rendering data centre services on behalf of third parties or any other use of the software for purposes of third parties (e.g. within the scope of online services) shall not be permitted. Any utilisation by or for companies affiliated with the customer shall only be permitted with express written permission in the license certificate. The distribution of the software shall not be permitted.

6.

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 to the customer upon written request the necessary information for an appropriate remuneration and within a reasonable period of time.

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 undertaking of the third party to accept PROSTEP's regulations regarding rights of use and confidentiality requirements. The acquirer shall not be entitled to derive from this permission any claims vis-à-vis 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 programme;

- manual in digital form.

The 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 a 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 for an unlimited period of time. Any distribution shall not be permitted.

10.

An extension of the potential use shall require a separate contractual agreement. PROSTEP shall be entitled to examine the scope of use at any time by means of a license manager. In the case that PROSTEP notices that the customer uses the software beyond the agreed scope, PROSTEP shall have the right to invoice the difference between the paid remuneration and the remuneration for the actual scope of use. Any further rights shall remain reserved.

11.

Third-party software contained in the PROSTEP products is subject to the terms and conditions of the third-party software manufacturer or supplier, which may be made available to the customer at any

time upon request; alternatively, PROSTEP shall also be permitted to notify the customer of the internet address from which the terms may be retrieved.

A. § 5 Contact Persons and Cooperation of the Customer

1.

The complexity and individuality of the software require intensive cooperation between the customer and PROSTEP. The customer shall contribute free of charge to the performance of the contractual services (including error removal).

2.

In the order confirmation, the customer shall designate in relation to PROSTEP a contact person and a deputy, who shall be responsible for all issues in connection with the performance of the contract and also as competent system administrators.

3.

The customer shall provide to PROSTEP in due time and without being requested to do so all information necessary for the performance of the contract (e.g. regarding business procedures, available hardware and software environment, data structures). This obligation shall also include the provision of data of the customer, i.e. as required test data, but also real data in appropriate quality and quantity, which PROSTEP requires for the performance of the contract. The data storage devices and data format shall be agreed upon.

4.

At regular intervals (PROSTEP recommends to do so at least once per day) as well as prior to each intervention in existing EDP systems (e.g. before the installation of new programmes or versions), the customer shall perform a data backup.

5.

In the case that the customer does not – or not properly or not in due time – comply with their contractual obligations to cooperate, PROSTEP shall be permitted to invoice for any costs or extra work or expenses resulting therefrom in accordance with the rates of remuneration applicable at that time.

A. § 6 Delays in Deliveries

1.

PROSTEP will be able to meet deadlines agreed upon only if the customer fully complies with their cooperation obligations. Deadlines agreed upon may be postponed in cases of changes and extensions and insufficient contribution. The deadlines shall be postponed in these cases and in other cases that PROSTEP is not liable for (e.g. force majeure, labour disputes, etc.) by the time additionally required or by the time during which the disturbances did exist, respectively, and by an appropriate restart time.

2.

In the case that PROSTEP enters into default, the customer shall first be obliged to fix in writing an appropriate grace period for the performance of the deliveries and services. Only if this period has expired without the desired result, the customer shall be permitted to assert further rights. If the customer would like to terminate the contract for cause after the grace period has expired without the desired result, the customer shall announce this intention to terminate the contract in the message by means of which the grace period is fixed.

A. § 7 Defects of Quality and Title

1.

In cases of defects of quality and title, PROSTEP shall primarily comply with their warranty obligations by means of supplementary performance. In the case of defects of quality, the supplementary performance shall consist – at PROSTEP's option – in the removal of errors or the delivery of an error-free programme version or of other error-free work results. In the case that the contractually agreed usage is restricted due to defects of title (e.g. by third parties asserting rights to the software), PROSTEP shall – in the scope of the supplementary performance and at their option – ensure a usage of the software as agreed upon in the contract by defending against or satisfying these rights or by accordingly changing the contractual items. At their option, PROSTEP shall be permitted to act themselves as a party in the judicial or extra-judicial dispute with the third party on behalf of the

customer. The customer shall to a reasonable extent and free of charge support PROSTEP in this context.

2.

Furthermore, the customer shall have the right to rescind the contract after an appropriate period (during which several attempts of supplementary performance will be permitted, if applicable), which has been granted in writing, has expired without the desired result.

3.

In the case of defects of quality, the due fulfilment of obligations by PROSTEP shall require that the customer notifies of errors without delay in writing or by email, whereby the error shall be described in detail. The requirement in the case of defects of title shall be that the customer notifies PROSTEP without delay in writing of protective rights of third parties asserted vis-à-vis the customer and submits all necessary information and data.

4.

PROSTEP shall support the customer in the error tracking also if it is not certain that errors in the deliveries and services of PROSTEP are concerned. If during the error tracking it does not become evidently apparent that the errors that occurred were caused by deliveries and services of PROSTEP, PROSTEP shall invoice the customer for the work or expenses that have arisen.

5.

PROSTEP shall not have any obligations in relation to defects of quality or title if the contractual items have been altered without the consent of PROSTEP and the customer does not prove that the respective defect of quality or title is independent therefrom. The same shall apply if the customer makes customizing settings themselves without the consent of PROSTEP.

6.

The warranty period for defects of quality and title shall have a duration of one year (except in cases of intent) and shall start upon delivery.

7.

In cases of defects of third-party software or hardware, which is also provided by PROSTEP within the scope of this contract, PROSTEP shall – also at their option – also be permitted to first assign to the customer the claims that PROSTEP is insofar entitled to vis-à-vis their respective suppliers. In such a case, the customer shall only be permitted to assert against PROSTEP claims they are entitled to if the customer has asserted claims – in court, if applicable – against these persons without the desired result.

A. § 8 Error Report and Response Times; Error Handling

1.

PROSTEP shall receive error reports from the customer by email or telephone during the following business hours:

Monday – Friday 09.00 am to 5.00 pm, except on bank holidays at the location of PROSTEP. Outside of the indicated hours, problems may be reported via answering machine or email.

2.

Priority	Criteria for allocation to the priority groups	Response time (in hours) until contact
1	Errors preventing operation: Errors that lead to repeated system crashes or system failures with not only a short duration, to losses of data or data inconsistencies and in this way prevent an economically reasonable usage of the entire system by the customer.	4
2	Errors impeding operation: Severe error or severe deviation from the functionality agreed upon, which significantly impede the usage of the entire system or individual parts of the system for a longer period of time and in this way result in a significant limitation of the economically reasonable usage of the entire system for not only a short period of time and for which there is no appropriate workaround available.	6
3	Errors impeding operation, with temporary workaround: Errors corresponding to priority 2, but which may be solved temporarily by appropriate manual interferences or the provision of a temporary software solution.	12
4	Other errors: Errors that do not or not significantly limit the usability of the entire system.	24

3.

After a due error report by the customer, PROSTEP shall allocate the error to one of the priority groups indicated in section 2, assign a ticketing number, confirm vis-à-vis the customer the acceptance of the error by email, and contact the customer within the response times indicated in section 2. The availability of the customer via the telephone number or email address agreed upon shall be a requirement for the compliance with the response time.

4.

"Response time" shall be understood as the time that passes between the acceptance of the error by PROSTEP (confirmed vis-à-vis the customer by email) and the customer being contacted by a technical expert from PROSTEP. The response times shall run only during the business hours indicated in section 1. Error removal services shall only be performed during these business hours.

A. § 9 Errors of the Software, Third-Party Software and Hardware, Operating Errors, other Services

PROSTEP shall support the customer in the error analysis as follows:

1.

PROSTEP shall be liable for errors in the software purchased by the customer within the scope of the liability for defects of quality and title (A. General Provisions, § 7).

2.

In the case of customers which have leased the software (including maintenance) (B. Special Provisions, § 2) or customers which have purchased the software and have additionally concluded a software maintenance contract (B. Special Provisions, § 3), PROSTEP shall remove any errors in their own software. PROSTEP shall separately invoice the customer for the accrued work or expenses unless during the error analysis it becomes obvious that the errors that occurred are attributable to the software or services of PROSTEP.

3.

In the case of customers who have additionally concluded a hotline contract (B. Special Provisions, § 4), PROSTEP shall additionally remove also other errors within the service contingent agreed upon in the hotline contract, even if this is not an error of the PROSTEP software. If the service contingent

contractually agreed upon is exceeded, the customer may additionally purchase further services at an hourly rate defined in the quotation regarding the hotline services.

A. § 10 Technical Requirements; System Environment

1.

The error analysis and removal shall be performed via telephone, email or remote connection, unless the parties have expressly agreed upon a deviating regulation in writing for individual cases. The customer shall ensure the establishment and maintenance of a remote connection at their own expense during the entire term of the contract. PROSTEP shall undertake to use this connection only after prior coordination; in other respects, the regulations regarding data protection pursuant to § 12 shall apply.

2.

PROSTEP shall inform customers of maintenance and hotline contracts in due time of changes to the technical requirements and the system environments supported by PROSTEP. In the case that the changes are not reasonable for the customer, the customer shall have the right to terminate the contract within four weeks after the receipt of the notification as of the end of the next possible quarter; if the customer does not terminate the contract, they shall be obliged to implement the technical changes. PROSTEP may in each case only perform the maintenance services in the case that all technical requirements for the system environments supported by PROSTEP at the relevant time have been met. If the contract is terminated, PROSTEP shall refund any remuneration already paid for the period after the time as of which the contract has been terminated; any further rights shall be excluded.

A. § 11 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 are reproducible from databases available in machine-readable form using reasonable efforts.

A. § 12 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.

A. § 13 Jurisdiction and Applicable Law; final Provisions

1.

The place of performance shall be the seat of PROSTEP. The place of jurisdiction regarding all disputes concerning the contractual relationship shall be the seat 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 Software Terms and Conditions should be translated into another language, the German version shall have priority in cases of deviations or interpretation difficulties.

B. Special Provisions

B. § 1 Software Purchase

In the case that the customer purchases PROSTEP software, the following additional regulations shall apply:

1.

PROSTEP shall undertake to send the software in the form of its object code as well as the corresponding user manuals in digital form to the customer or to make it available to the customer in another way.

2.

The installation of the software shall not be covered by the delivery obligations of PROSTEP. Any additional support services such as the installation of the software or the training of employees of the customer shall be agreed upon separately in a project contract.

3.

PROSTEP shall reserve the right to make technical improvements and further developments of the software.

B. § 2 Software Lease

In the case that the customer leases PROSTEP software, the following additional regulations shall apply:

1.
The lease contract concerning the software described in the quotation shall include the maintenance of the software (§ 3).

2.
The contract shall have a duration of one year and shall automatically be extended by another year, unless one of both contractual partners terminates the contract as of the end of the month, whereby a notice period of three months shall be observed.

3.
The right of a termination for cause shall remain reserved. A prior warning of it shall be given in writing, whereby the reason for the termination shall be indicated and an appropriate period for the removal of the reason for the termination shall be fixed. Such causes shall particularly be unforeseeable errors preventing the operation or significant errors impeding the operation of the software without a reasonable workaround, that may not be removed, delays of payments of the customer by more than six weeks, the opening of insolvency proceedings regarding the assets of a contractual partner or the rejection of the opening due to the lack of assets.

4.
Every termination shall only be valid when made in writing.

5.
After the termination of the contractual relationship, the customer shall be obliged – at PROSTEP's option – to return the software to PROSTEP or to delete the provided programmes and to destroy the submitted manuals as well as any other material possibly submitted to the customer. The customer must confirm this to PROSTEP in writing. Any usage of the software after the termination of the contractual relationship shall be prohibited.

6.
The installation of the software is not part of the delivery obligations of PROSTEP. Additional support services such as the installation of the software or the training of the customer's employees are to be agreed separately in a project contract.

B. § 3 Software Maintenance

In the case that the customer and PROSTEP have entered into a contract governing the maintenance of the purchased software, the following additional regulations shall apply:

1.
In the case that the customer purchases further licenses regarding the software to be maintained, these shall be included in the contract and the remuneration shall be adjusted accordingly. PROSTEP shall send to the customer a contract that was amended accordingly.

2.
PROSTEP shall be permitted to change the provisions of the software maintenance, whereby an announcement period of 60 days shall be observed. The customer shall be entitled to terminate the contract for cause as of the end of the next possible quarter within 60 days after the receipt of the changed provisions. In the case that the customer does not terminate the contract, the new software maintenance provisions shall apply as from the time indicated in the announcement. In the case that the customer terminates the contract, PROSTEP shall refund any remuneration already paid for a period after the time as of which the contract has been terminated; any further rights shall be excluded.

B. § 4 Hotline Contract

In the case that the customer and PROSTEP have entered into a hotline contract, the following additional regulations shall apply:

The subject matter of the hotline contract shall be the provision of a service contingent in accordance with the quotation at the PROSTEP hotline regarding the PROSTEP software products installed on the customer's systems and indicated in the hotline contract. In that context, the support service level Gold shall include both telephone and online support.