

Software License Terms

**PROCITEC GmbH
Rastatter Straße 41
75179 Pforzheim/Germany**

with regard to

- I. Lease of Standard Software on a permanent basis,**
- II. Maintenance of leased Standard Software**

I. Lease of Standard Software

1. Scope of Applicability

- 1.1 All business dealings shall exclusively be governed by the following **Terms and Conditions**. Any of the Supplier's terms or conditions to the contrary to or deviating from our terms and conditions shall not be valid unless expressly confirmed by us in writing. The same applies to Supplier's provisions that deviate from the statutory regulations to our detriment even if these **Terms and Conditions** do not explicitly refer to these statutory regulations. These **General Terms and Conditions** shall also apply if we unconditionally accept delivery of Supplier's goods or performance despite being aware of any supplier's terms to the contrary to or deviating from these **General Terms and Conditions** or from statutory regulations to our detriment.
- 1.2 These **General Terms and Conditions** shall only apply with respect to entrepreneurs, legal entities under public law and public utility funds as defined by section 310 subsection 1 of the German Civil Code (§ 310 Abs.1 BGB).
- 1.3 These **General Terms and Conditions** shall also apply to any future business transactions with the Supplier.

2. Conclusion and Alteration of Contract Contents

- 2.1 Our quotations are without engagement.
- 2.2 We reserve the right to alter the Products as follows, as far as this is reasonable for the Partner:
 - Product alterations in the course of continuous Product development and Product improvement;
 - customary deviations.

3. Subject-Matter of Contract

- 3.1 Within the scope of a non-exclusive right of use as object programs, the Standard Software Products indicated in the order confirmation shall be given to Partner against the agreed royalty. The release of the source code shall not be owed in general. An application documentation (user manual) belongs to the Standard Software which shall be given to Partner in writing and/or electronically. Standard Software and application documentation shall hereinafter be referred to as "**Software Material**". Environment of hardware and software, especially the operating system, shall be stipulated in the operating system. The functional range, functionality and the conditions of operating the hardware and software result from the application documentation.
- 3.2 **Software Material** shall also include re-issues or supplements of **Software Material** which we release to Partner during the term of and according to this Contract or according to a corresponding **Software Maintenance Contract**.
- 3.3 **Software Material** shall be our intellectual property and integral know-how.
- 3.4 We reserve any and all rights, especially exploitation rights and industrial property rights, in any objects released to Partner, particularly **Software Material**, testing programs, documents, information and data as far as they are not granted to Partner due to agreement, according to the spirit and purpose of the Contract or law (especially copyrights law or proprietary rights according to the rules of sales law).
- 3.5 The nature of the **Software Material** owed shall result exclusively and exhaustively from the specification of services of the user manuals (see cl. 3.1). Other descriptions of our Products, public announcements and advertising shall include no owed descriptions of nature as contrac-

- tually agreed upon.
- 3.6 Partner's right to use shall be limited to the following rights within the scope of ordinary use:
- right of reproduction according to cl. 4,
 - single right of use/multiple right of use/business right of use, network application according to cl. 5 depending on agreement,
 - necessary handlings within the scope of error correction and, by way of exception, a reverse engineering according to cl. 6.

Due to protection by copyright, Partner may not – apart from these powers – execute any amendments, translations or reproductions of **Software Material**, neither in parts nor temporarily, no matter what sort of and by what means. An inadmissible reproduction shall also be the print of the source code.

- 3.7 We shall be entitled to use the name and the reference of Partner, who uses the **Software Material**, for our own advertising purposes.

4. Right of Reproduction and Access Protection

- 4.1 Partner may reproduce the Standard Software as far as the respective reproduction for the use of software is necessary. In particular, these necessary reproductions include the installation of software from the original media to the mass memory of the hardware used, the loading of the program into the working memory as well as the running of the program.
- 4.2 Further, Partner may reproduce for backup purposes. He may create backup copies and ordinary data backups in a reasonable number. The backup copies shall be marked as such of the program released.
- 4.3 If the regular backup of the complete data stock including the used computer programs is essential for reasons of data safety or in order to ensure a fast reactivation of the computer system after a complete breakdown, Partner may create backup copies in a compelling necessary number. The affected media shall be marked respectively. The backup copies may be used for archivist purposes only.
- 4.4 Partner may make the **Software Material** accessible to employees and third parties only if this is necessary in order to execute the right of use.
- 4.5 Partner shall be obligated to prevent the unauthorized access to the **Software Material** as well as the access identification by using reasonable means of precaution. The original media, the backup copies and the access identification shall be stored in a place preserved against third parties' access. Partner shall insistently point out to all persons he grants access to the **Software Material**, especially to his employees, the observance of the present **Terms and Conditions** as well the provisions of copyright law, and Partner shall obligate these persons to the observance in writing.
- 4.6 Further, Partner may not make reproductions including the release of source code on a printer as well as copying the complete user manual or integral parts of it. If need be, further user manuals shall be obtained from us.

5. Single Right of Use/Multiple Right of Use/Business Right of Use and Network Application

Royalty shall depend on the kind of use, in particular on the kind of the operating system used. The right of use of the **Software Material** released shall – subject to separate agreement – only be granted against payment of the agreed royalty as single workplace license, multiple workplace license or network license.

Installation of **Standard Software** may only be carried out at the agreed place of installation and on the existing data processing equipment. The use of **Standard Software** at another place than the place of installation shall be admissible if the **Standard Software** is temporarily not ready for use. In any case, Partner may use the **Standard Software** at an alternative place only within the scope of the Contract concluded with us.

5.1 Single Workplace License

Partner may use the software (at the place of installation) on any machine (central unit) at his disposal. However, if Partner changes hardware he shall delete the software from the hardware previously used. A contemporaneous storing or using on more than just one hardware is inadmissible. Dongle versions shall be excluded.

5.2 Multiple Workplace License

If Partner intends to use the software on several hardware configurations at the same time – probably by several employees, he shall acquire a multiple workplace license or a corresponding number of **Standard Software Products**. The use of software released within a network or another multiple station computer system shall be inadmissible if the possibility of contem-

- poraneous multiple workplace license of the program is given.
- 5.3 **Business Workplace License**
Partner may use the **Standard Software** (at the place of installation) for his entire company, he may also grant use to companies in which he has the majority (affiliated companies) if these do not dispose of own data processing units on which the **Standard Software** is able to run. If the right of use is granted to affiliated companies in the above spirit, Partner shall guarantee that the use shall only be made according to our **General Terms and Conditions**.
- 5.4 **Network License**
If Partner intends to use the software within a network or other multiple station computer systems he shall stop a contemporaneous multiple workplace license by way of access protection mechanisms or payment of a special network royalty. The amount shall be subject to the number of users linked to the computer system.
We shall communicate Partner the royalty amount to be paid in the individual case without delay as soon as Partner has informed us of the network application planned including the number of connected users in writing. The use in such a network or multiple station computer system shall only be admissible after complete payment of the network royalty.
- 5.5 Partner may use **Software Material** only for purposes to carry out his internal business operations and those of affiliated companies. If the processing of third parties' data is part of Partner's entrepreneurial activity ("provider of services"), the processing of own and/or third parties' data shall be granted with the **Software Material** released to Partner for use.
- 5.6 Each use beyond the extent contractually agreed upon, especially a contemporaneous use of **Standard Software** on more than the agreed number of machines or workplaces, is contrary to the Contract. In such case, Partner shall be obligated to communicate the overuse to us. Then the Parties shall try to reach an agreement on the extension of rights of use. For the period of overuse, i. e. until the conclusion of such agreement or the end of overuse, Partner shall be obligated to pay damages for the overuse according to our usual royalty. For the calculation of damages, a four-year linear depreciation shall be the basis.
In case Partner does not communicate the overuse, a contractual penalty to the extent of the threefold royalty, which we usually invoice for the use claimed, shall be due for payment.
- 5.7 For Software for which the Supplier has only derived rights to use and that is no open source Software (third party software), the provisions of this No. 3 shall be amended and superseded by the conditions of use agreed between the Supplier and its licensor to the extent that they refer to the Purchaser (such as an end user license agreement); the Supplier shall notify the Purchaser of such conditions and make them available upon request.
- 5.8 For open source Software, the provisions of this No. 3 shall be superseded by the conditions of use underlying the open source Software. The Supplier shall make the source code available or accessible to the Purchaser only to the extent stipulated in the conditions of use underlying the open source software. The Supplier shall notify the Purchaser of the fact that open source Software and pertaining conditions of use exist and make such conditions of use accessible to the Purchaser or, of required according to the conditions of use, provide the Purchaser with them.

6. Decompilation and Program Amendments

- 6.1 According to Art. 69 a), subcl. 1 of the copyright law, Partner may correct errors in the **Standard Software** and effect necessary amendments and reproductions in this connection, if
- the quality of the **Standard Software** deviates from the descriptions of documentation of if the **Standard Software** is unable to fulfil its objectively intended duty and
 - the running of the **Standard Software** is additionally not only considerably disturbed.
- We shall be informed of the existence of such error. If we correct the error within a reasonable period of time, Partner's error corrections shall be inadmissible. Improvements beyond the error correction shall not be effected by Partner. Amendments which are made by Partner shall be documented and communicated to us.
- 6.2 On request, Partner may obtain our interface information which is necessary for the draw-up of an interoperable program. We shall not be obligated to give such information.
If we forward such information to Partner, it may only be used for the draw-up of an interoperable program. In case we do not forward the interface information to Partner, he may – within the boundaries of Art. 69 e) of the copyright law – execute a decompilation. Information gained therefrom, which does not concern the interfaces, shall be destroyed without delay.
Further, Partner shall not be entitled to execute a reverse engineering (reduction of the computer program to previous development stages, e. g. source code, backward error analysis, re-

- develop, decompile, disassemble) no matter in what form or by what means.
- 6.3 The removal of copy protection or similar protection mechanisms shall only be admissible if the undisturbed program use is impaired or impeded by these protection mechanisms. Partner shall bear the burden of proof for impairment or impediment of undisturbed use. Cl. 8.4 shall be considered.
- 6.4 The corresponding actions according to cl. 6.3 may only be left to commercially working third parties, who potentially compete with us, if we do not want to carry out the program amendments requested against an adequate remuneration. We shall be granted a reasonable deadline for examination of the order acceptance and be informed of the third party's name.
- 6.5 In any case, copyright notices, serial numbers as well as other features serving the identification of program shall not be removed or amended. The same applies for corresponding features regarding the prevention of display on screen.

7. Re-sale and Re-lease

- 7.1 Partner may sell or give away the **Software Material** to third parties on a permanent basis provided that the third person acquiring the **Software Material** is prepared to accept the continuing applicability of the **General Terms and Conditions** according to cl. 3. – 9. towards him. Due to the passing-on of the **Software Material**, Partner's right to use the program shall become void.
- 7.2 Upon Partner's passing-on of **Software Material** to third parties, Partner shall be obligated to observe his duty to furnish information according to cl. 8.1.
- 7.3 In case of passing-on of **Software Material** to third parties, Partner shall give to acquirer any and all copies of the program including possible existing backups or make the copies of the **Software Material**, which were not handed over to acquirer, completely and irreversibly inoperative.
- 7.4 Transfer of software programs by way of data transfer, no matter in what form, shall be inadmissible.
- 7.5 Partner shall not pass software on to third parties if there is the well-founded suspicion that the third party would infringe the **General Terms and Conditions**, especially create prohibited reproductions. This shall also apply with regard to Partner's employees.
- 7.6 Partner may temporarily pass on the **Software Material** to third parties as far as this is not effected by way of rent for pecuniary rewards or lease and if third party is prepared to accept the continuing applicability of the **General Terms and Conditions** according to cl. 3. – 9. For the period of passing-on of software to third parties, Partner shall not have the right to use the program. Cl. 7.2. – 7.5. above shall apply.

8. Duty to furnish Information

- 8.1 Partner shall inform us in writing in advance of any amendments concerning his right to use (single workplace license/multiple workplace license/business workplace license/network workplace license) or the royalty.
- 8.2 Partner shall inform us in writing if he wants to use the software acquired (or a change of hardware) within a network.
- 8.3 Partner shall be obligated to notify us in writing of the removal of the copy protection or of a similar protection mechanism from the source code. The disturbance of the use of program, which is the premise for such permitted program amendments, shall be described as precisely as possible by Partner. Partner's duty to describe shall include a detailed account of disturbance symptoms occurred, the reason for disturbance assumed as well as a detailed description of the program amendments made.
- 8.4 Partner shall notify us in writing of a permanent change of place of installation. The same shall apply for a temporary change of place of installation of more than two weeks.

9. Re-issue of the Software Material

- 9.1 In the framework of Partner's productive use of the handed over re-issue of the license material (e. g. within the scope of subsequent improvement or maintenance), Partner's rights according to cl. 7 regarding the **Software Material** replaced shall become void.
- 9.2 Partner's right of use with regard to the **Software Material** shall become void 12 months after the beginning of the productive use of the re-issue of license material. Partner shall be obligated to remove the replaced version of the **Software Material** and all copies and partial copies thereof completely.

10. Partner's Responsibility

In general, Partner is responsible for the

- choice, installation and use of the **Software Material** and the results generated thereof,
- creation and maintenance of the workplace environment necessary for the **Software Material** (hardware, programs and test data),
- documents, information and data originating from Partner,
- measures for backup of data and programs.

11. Terms of Delivery, Installation, Delay in Delivery

11.1 Delivery shall be effected by our handing-over of **Software Material** on media and of user manuals (despatch) to Partner or our retrievable provision in a network. We shall inform Partner thereof. If media is damaged or inadvertently deleted during transport or after receipt at Partner's, we shall replace the media. The aforementioned provisions shall apply for re-issues and supplements of **Software Material** respectively.

11.2 If not otherwise agreed upon, installation of **Software Material** shall be carried out by Partner. We shall give advisory support in the course of preparation installation. Partner shall be obligated to observe our indications or timely and elaborately clear up the conditions of installation with us.

11.3 Delivery shall be effected no later than three months after conclusion of the Contract if not otherwise agreed upon with Partner.

11.4 For the observance of delivery dates and the passing of risk the date for despatch shall be decisive when delivery leaves our premises. In case of electronic delivery, the date shall be decisive when the **Software Material** is retrievably provided for and when this is communicated to Partner.

11.5 Delays in Delivery not to be assumed by us

11.5.1 Delays in delivery due to the following impediments in delivery shall not be assumed by us unless an exercise risk or a warranty was exceptionally assumed by us with regard to the observance of the time limit. The same shall apply if these impediments occur with our suppliers or their sub-suppliers:

Circumstances of force majeure as well as impediments in delivery

- which occur after conclusion of Contract or become known to us only after conclusion of Contract without our own fault and
- of which we can prove that the circumstances of force majeure as well as impediments in delivery could not be predicted or prevented by us by way of necessary care and that we are not at fault with regard to assumption, means of precaution and averting.
- hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which PROCITEC is not responsible

On condition of the above – occurrence or becoming known only after conclusion of Contract without our own fault – this shall particularly apply for:
justified forms of industrial actions (strike and lockout); operational breakdown.

11.5.2 Partner's claims for damages shall be excluded in case of delay in delivery according to cl. 11.5.1.

11.5.3 In case of definite impediment in delivery according to cl. 11.5.1, each party shall be entitled to immediately terminate the Contract by rescission of the Contract according to the statutory rules.

11.5.4 In case of temporary impediment of delivery according to cl. 11.5.1 we shall be entitled to postpone delivery for the duration of the impediments plus a reasonable starting time. If we prove against Partner an unreasonable impediment of delivery we shall be entitled to rescind the Contract.

Partner shall only have the right to rescind the Contract on condition of cl. 11.6 below.

11.6 Partner's right of rescission

If we can prove that we are not at fault of the delay in delivery, Partner shall only be entitled to rescind the Contract

- if Partner bound the continuity of his performance interest to the timely delivery (transaction for delivery by a fixed date) in the Contract or
- if he proves that his performance interest ceased to exist or that the sustainability of the Contract is unreasonable to Partner.

Further, Art. 323 cl. 4 – 6 BGB (German Civil Code) shall apply. The statutory rules shall be decisive for the legal consequences of rescission (Art. 326 in connection with 346 etc. BGB – German Civil Code); performances not owed by Partner may be demanded back by him.

12. Prices, Terms of Payment, Reservation of a Right

- 12.1 Unless otherwise agreed upon, our prices for the **Software Material** are postage/despatch excluded.
VAT will additionally be invoiced to the extent respectively described by law.
In case of deliveries to a foreign country, VAT for import, customs fees, specific taxes in the importing country and public charges to be imposed for import as well as the import advice shall be borne by licensee. We are only responsible for conduction in compliance with customs.
- 12.2 Payments shall be effected within 30 days from date of invoice without any deductions free our cashier. Invoice shall be made up as soon as delivery leaves our premises. Payment shall only be effected if and as far as we can finally dispose of the amount.
- 12.3 If payment is not effected within 30 days from date of invoice, Partner shall come into arrears with payment without further declaration by us. Further, the statutory rules regarding the consequences of delay in payment shall apply.
- 12.4 Partner shall have the right to set off only in case of undisputed, recognized or non-appealed recognized counter-claims. Partner shall only be entitled to perform the right of retention as far as his counter-claim is based on the same contractual relationship.
- 12.5 We reserve any and all rights, especially proprietary rights and exploitation rights by copyright in the **items of delivery** (goods with reservation) until complete payment of any and all claims which exist at the date of delivery or claims subsequently coming into existence from the software cession contract as well as from the corresponding maintenance agreement.
- 12.6 In case of arrears in payment at Partner's fault as well as in case of considerable infringement of duties of care and observance, our assertion of reservation of a right shall not be deemed as rescission of Contract. We shall explicitly inform Partner about the latter.
- 12.7 In case of our assertion of reservation of a right, Partner's right to use the **Software Material** shall become void. On our request, the **Software Material** including any and all copies shall be returned to us at our option at Partner's costs or Partner shall remove the **Software Material**.
- 12.8 Partner shall be obligated to inform us without delay of third parties' access to the **Software Material**, especially within the scope of execution or in case of **Software Material** become lost. Partner shall take any and all necessary actions in order to protect our rights with regard to the **Software Material**, especially inform third parties of our rights.

13. Duty to Examine and Notify of Defects

Partner shall assume the duty to examine and notify of defects according to Art. 377 HGB (German Commercial Code). Partner shall examine the **Software Material** after delivery without delay. For this purpose he shall especially install the **Software Material** after receipt without delay and examine its functionality. Defects which are hereby detected or which are detectible shall immediately be communicated from receipt of delivery by way of detailed description. Partner shall hereby observe our indications for problem analysis and determination of errors.

14. Specification of Services, Defects in Quality

- 14.1 The specification of services (see cl. 3.1 and 3.5) are subject-matter of quality agreements and not of guarantees or warranties. In case of doubt, our declarations in connection with this Contract include no guarantees or warranties in the sense of liability intensification or assumption of a particular liability. In case of doubt, only our explicit written declarations with regard to guarantees and warranties shall be decisive.
- 14.2 For defects in quality of the **Software Material** we shall be liable according to the rules of sales law except for the provisions of cl. 14.
A defect in quality exists if the **Software Material** does not effect performance in contractually agreed use as laid down in the description of functionality and if this affects the suitability of the contractually agreed use considerably.
- 14.3 Partner's claims based on defects do not exist:
- 14.3.1 in case of only marginal deviations from the agreed quality or in case of only marginal impairment of usability of the **Software Material**;
- 14.3.2 in case of defects caused by deviations from the application conditions indicated in the application documentation for **Standard Software**.

- 14.4 Partner's right to claim defect provides that Partner has reasonably complied with the duties of examination and notification of defects owed according to cl. 13 of the **General Terms and Conditions**.
- 14.5 Partner shall not claim any liability for defects if he inadmissibly has amended the **Standard Software** or had it amended by third parties, in case of Partner's operating failure as well as in case of use of equipment of hardware, software or other devices, which are not suitable for the **Standard Software**, unless Partner proves that his aforementioned actions do not considerably impede our defect analysis and expenditures for repair of defects and that the defect was inherent at the time of handing over.
- 14.6 The guarantee and liability claims are not extended to malfunctions or defects, which are due to the use of software not provided by PROCITEC GmbH.
This exclusion of warranty applies in case software of third-party providers, for example software for monitoring or prevention of computer viruses, disturbs the function of the PROCITEC Software or deletes it completely or partially from the designated memory location.
- 14.7 **Subsequent Performance**
- 14.7.1 As far as there is a material defect we shall be entitled, at our option, to effect subsequent performance in form of remedy of defects or delivery of new **Software Material** free of defects. Should one or both kinds of subsequent performance be impossible or unreasonable we shall be entitled to refuse.
We may also refuse subsequent performance as long as Partner does not fulfil his obligations to pay to an extent which corresponds to the part of performance free of defects.
- 14.7.2 After receipt of Partner's error advice we shall perform a central customer service by way of our hotline or sending of information – also via a telecommunication line – or handing over of documents such as troubleshooting or avoidance of troubles or corrected program parts. If the central customer service is not successful we shall inform Partner whether the **Software Material** complained about shall be returned to us or be examined by us at Partner's within the scope of a local customer service.
- 14.7.3 Partner shall grant us adequate time and opportunity for performance of remedy of defects. For fulfilment of liability for defects, our employees and representatives shall be granted free access to Products.
To its necessary extent, Partner shall place the corresponding rooms, devices, software, documents with possible error examples and data material, also test data, computer times as well as employees for information purposes at our disposal and remove, on our instruction, programs (incl. his application programs), data, media, amendments, etc. prior to remedy of defects.
- 14.7.4 We shall only be obligated to bear any expenses of subsequent performance as far as these expenses do not increase by taking the **Software Material** to another place than the place of installation.
- 14.7.5 We shall be entitled to have the remedy of defects carried out by third parties. Replaced **Software Material** shall become our property.
- 14.7.6 As far as reasonable, Partner shall also accept a new version of the **Software Material**, which does no more include the defect, as subsequent performance. If Partner does not accept a new version as subsequent performance out of unreasonableness, his remaining rights instead of subsequent performance shall remain unaffected.
- 14.7.7 We shall be entitled to avoid a defect if the defect can only be remedied with an unreasonable effort and thus the running time or the answer time response of **Software Material** does not suffer considerably.
- 14.7.8 Supply of printed or printable correction instruction for the documentation affected by the defect may also belong to subsequent performance.
- 14.7.9 If examination turns out that there is no defect or if we are not responsible for the defect within the scope of liability for defects, we may demand reimbursement of expenditures according to the usual hourly rates plus necessary expenses.
- 14.8 In case of our failed or impossible subsequent performance, culpable or unreasonable delay or serious and final refusal of subsequent performance or unreasonableness of subsequent performance for Partner, Partner shall be entitled, at his option, to either reduce the price or rescind the Contract.
- 14.9 As far as the contractual provisions do not include any or deviating provisions with regard to the requirements and consequences of subsequent performance, reduction and rescission, the statutory rules of these rights shall apply.
- 14.10 Partner's claims for damages and reimbursement of expenditures in connection with defects

comply with the following provisions under cl. 14.10.1 to 14.11 without regard to the legal nature of the claim, in particular also with reference to claims for defects and violation of duties as well as tortious claims.

- 14.10.1 We shall be liable for damage according to the statutory provisions
- in case of intent;
 - in case of legal representatives' or executive employees' gross negligence;
 - in case of infringement of material contractual obligations, also in case of gross negligence of our other vicarious agents;
 - in case of culpable injury of life, body, health;
 - in case of defects as their absence is guaranteed or as far as a guarantee for the quality or any other guarantee was given.
- 14.10.2 According to the statutory provisions, we shall also be liable for minor negligent infringement of material contractual obligations by our legal representatives, executive employees and other vicarious agents; liability, however, shall be limited to the damage, which is reasonably predictable and typical for Contract.
- 14.10.3 Liability for data loss shall be limited to the typical effort of re-establishment, which would have occurred in case of regular and danger corresponding making of backups. Liability for loss of signal data shall be excluded.
- 14.10.4 Liability according to product liability act shall remain unaffected.
- 14.10.5 As far as not otherwise agreed upon in cl. 14.10 above, further claims shall be excluded.
- 14.11 The statutory rules for burden of proof shall remain unaffected according to the provisions of cl. 14.10. above.

15. Liability for Defect of Title

Copyrights or exploitation rights protected by copyright in **Software Material** shall be entitled to us and/or third parties. There is a defect of title if the necessary rights (rights of use) could not be effectively granted to Partner for contractual use. In case of defect of title, we shall be liable according to cl. 14 above except for the following provisions:

- 15.1 Partner shall be obligated to notify us immediately and elaborately of third parties' assertion of claims. As far as possible, we shall be entitled to exercise sole control on the judicial and extra-judicial defence and action connected with it. Partner shall grant us necessary support, information and power of attorney for the execution of the above actions.
- 15.2 If contractual use of **Software Material** is impaired by third parties' rights we shall have the right to perform subsequent performance at our option to the extent which is reasonable for Partner by way of
- either amending the **Software Material** in a way that it is falling out of the area of protection or
 - obtaining the power that **Software Material** may be used without limitations as contractually agreed upon and without additional costs for Partner or
 - providing Partner a new software stock to the functional extent contractually agreed upon with the possibility of perfect use or
 - exchanging the **Software Material** against a software which use as contractually agreed upon does not infringe any protected rights.

Function alterations with acceptable effects shall be reasonable for Partner.

16. Total Liability, Partner's Rescission

- 16.1 The following provisions shall apply for Partner's claims outside liability for defects. Statutory or contractual rights and claims entitled to us shall neither be excluded nor limited.
- 16.2 For liability for damages, the provisions cl. 14.10 and 14.11 above shall apply accordingly. An exceeding liability for damages shall be excluded without regard of legal nature of the asserted claim. This shall explicitly apply for claims for damages besides the performance and damages instead of performance due to violation of duties as well as for tortious claims for compensation for property damage according to Art. 823 BGB (German Civil Code).
- 16.3 The limitation according to cl. 16.2 shall also apply as far as Partner claims for expenditures.
- 16.4 As far as liability towards us is excluded or limited, this shall also apply with regard to personal liability for damages of our clerks, employees, members of staff, representatives and vicarious agents.
- 16.5 Partner shall only be entitled to rescind the Contract within the scope of the statutory provisions if we are responsible for the violation of duty. However, in cases of cl. 14.8 (failed subsequent performance etc.) and in case of impossibility it shall remain with the statutory require-

ments; for Partner's right of rescission in case of delay in our deliveries the provisions under cl. 11.5.3, 11.5.4 and 11.6 shall be decisive. In case of violation of duties, Partner shall declare within a reasonable deadline whether he will rescind the Contract due to violation of duty or demand delivery.

- 16.6 In case of Partner's justified rescission we shall be entitled to demand an adequate compensation for the use drawn by Partner from the application of **Standard Software** from the past up to reversed transaction. This compensation for loss of use shall be evaluated on the basis of a four-year total period of use of **Standard Software**; in case of rescission due to a defect a reasonable deduction shall be scheduled for the impairment of **Standard Software** due to a defect which resulted in rescission.

17. Limitation of Actions

- 17.1 The limitation period for claims and rights due to defects of **Software Material**, no matter for what legal grounds, shall be one year except for cl. 17.3 below.
- 17.2 The limitation period according to cl. 17.1 shall also apply for any and all claims for damages against us.
- 17.3 The limitation period according to cl. 17.1 shall not apply in the cases of cl. 14.10.1, 14.10.2 and 14.10.4, the statutory deadlines shall be decisive insofar.
- 17.4 As far as no explicitly fixed, the statutory provisions on the commencement of the limitation period, suspension of expiration of limitation, suspension and the anewed running of period shall remain unaffected.
- 17.5 Claims for reduction and the execution of right of rescission shall be excluded as far as the claim for subsequent performance is barred by limitation. In such case, Partner may refuse payment of royalty insofar as he would be entitled to do so due to rescission or reduction.

18. Termination of Right of Use

In case of termination of rights of use except for the cases separately fixed in these **General Terms and Conditions** (cl. 7, cl. 9), Partner shall be obligated, on our demand, to completely surrender the **Software Material** and all copies and partial copies and delete the **Software** stored or to completely and irreversibly make the **Software Material** useless including any and all copies as far as Partner is not obligated for safekeeping for a longer period by law. On our demand, we shall receive a guarantee of the execution in writing.

19. Secrecy Clause

Any document provided by PROCITEC to the customer, including samples, drawings, models, data, know-how as well as any and all other forwarded information which is not obviously intended for the public, are subject to confidentiality for a period of 10 years commencing with effectiveness of this contract. Such confidential information shall not be made accessible to third parties unless compulsory to perform the contract. Products developed according to or otherwise originating from our documents such as drawings, models or other confidential information shall not be used by customers or delivered or offered to third parties.

20. Text Form

By the **General Terms and Conditions**, declarations shall be prescribed to be effected in writing, thus text form according to Art. 126 b) BGB (German Civil Code) shall be decisive, i. e. the declarations may be effected by mail or fax; however, a declaration written on a computer or via e-mail shall also be sufficient.

21. Place of Performance, Place of Jurisdiction, Applicable Law, Supplementary Clause

- 21.1 Unless otherwise agreed upon, place of performance shall be our place of business.
- 21.2 If Partner is a merchant within the meaning of the German Commercial Code (HGB), a legal entity under public law or a public utility fund, place of jurisdiction for all disputes arising out of or in connection with the contractual relationship – herein included liabilities from cheques and bills of exchange – shall either be our principle place of business or, at our sole option, the location of Partner. This agreement as to the place of jurisdiction shall also apply for Partners having their location in a foreign country.
- 21.3 To all rights and obligations and all disputes arising out of or in connection with the contractual relationship between us and Partner, German law, excluding the UN Sales Convention (CIS Convention on Contracts for the International Sale of Goods of April 11, 1980) shall apply exclusively, without regard of German collision rules.

- 21.4 Should individual provisions of these **General Terms and Conditions** or individual provisions of other agreements concluded with us be or become invalid, this shall not affect the validity of the other provisions or agreements.

II. Terms and Conditions of Maintenance

For maintenance of software, the terms and conditions of lease of software according to I. above shall apply accordingly as far as no deviations result from the following terms and conditions of maintenance.

1. Subject-Matter of Contract

- 1.1 Maintenance of software shall be subject-matter of a maintenance agreement to be separately concluded with us apart from the software cession contract.
- 1.2 Maintenance shall refer to the **Software Material** released by us.

2. Maintenance Performances

- 2.1 Our maintenance service shall exclusively include the following maintenance performances:

2.1.1 Service of update and release

The service of update and release shall include

- release of respectively latest program version of **Software Material** which is subject-matter of the maintenance agreement;
- alteration or supplement of hardware or software environment at Partner's, release of the respectively latest program version adapted to the new environment as far as we dispose of versions suitable for the new environment.

Within the scope of the aforementioned service of update and release, the **Software Material** shall regularly be updated to such an extent that we

- adapt the **Software Material** in the respectively valid version to alterations in the system environment as well as to amended data;
- improve and continue to develop the **Software Material** (standard version) in the respectively valid program version due to troubleshooting to be prevented.

New versions may amend present functions and/or improve or include new functions.

2.1.2 Support by hotline or e-mail

At our option, we effect support by way of hotline or e-mail. Hotline support shall include telephone advice

- on questions regarding operation or application.
In case of user-oriented support, which exceeds an enquiry directly to be answered, we may invoice Partner with the expenditures accrued with us as far as the user-oriented support exceeds three working hours;
- on analysis, evasion or avoidance of errors.

- 2.2 Individual troubleshooting with Partner shall not be included in maintenance. This shall either be effected

- within the scope of our liability for defects of the respective software cession contract or – as far as an obligation on our side does not exist -
- within the scope of separate agreement with Partner on the basis of our ordinary remuneration rates. We generally shall not be obligated to conclude such agreements.

- 2.3 Maintenance shall be limited to the agreed place of installation. A change of place of installation shall be communicated to us in writing. We may refuse continuation of maintenance at the new place of installation for material grounds. Additional costs which accrue in the course of execution of maintenance due to change of place of installation shall be charged to Partner.

3. Granting of Rights

We shall grant Partner the right of use in the new version of **Software Material** to the same extent as Partner was entitled to use the original **Software Material** due to software cession contract and possible extensions of rights of use. Source code shall not be subject-matter of the contract accordingly. The provisions according to I. cl. 3. – 9. shall apply accordingly.

4. Supply, Adaption of Software Environment

- 4.1 Supply of new software versions shall be effected according to I. cl. 11.1 and 11.2 above.
- 4.2 As far as necessary for the new version of **Standard Software**, the necessary adaptations of environment of hardware and software shall be left to Partner.

5. Liability for Material Defects and Defects of Title

For our liability for material defects and defects of title with reference to new versions, I. cl. 13. – 15. shall apply respectively as far as not otherwise agreed upon hereinafter.

- 5.1 Condition for remedy of material defects shall be that Partner shall have implemented the current version of the **Software Material** within a reasonable term after release to Partner.
- 5.2 If our remedy of a material defect or defect of title is not successful within a reasonable term, Partner shall be entitled to set a final grace period and threaten us with the reduction of the maintenance remuneration or the termination of contract without prior notice in case of unsuccessful expiration of term. For Partner's claims for damages the provisions under I. cl. 14.10 and 14.11 shall apply.
- 5.3 We shall not be obligated to remedy material defects or defects of title which are communicated to us after termination of the maintenance agreement.

6. Remuneration

- 6.1 The maintenance remuneration as well as the calculation period shall result from the order confirmation.
- 6.2 We shall be entitled to adapt maintenance remuneration according to our current price list. We shall inform Partner of the adaption of remuneration in writing at least two months before. In case of increase of maintenance remuneration by more than 10 %, Partner shall be entitled to terminate the maintenance agreement by the end of the current calculation period within a period of one month after receipt of the demand to increase.
- 6.3 Further, the provisions under I. cl. 12. shall apply accordingly.

7. Term of Contract and Term of Notice

- 7.1 The Contract shall commence with the date indicated in the order confirmation.
- 7.2 Notice shall be made in writing.
- 7.3 The term for due notice shall be determined by agreement between the parties.
- 7.4 The right of exceptional notice out of material reasons shall remain unaffected. A material reason which entitles us to give exceptional notice shall in particular be
 - if Partner is in delay in payment of remunerations by more than one month;
 - if Partner's fortune becomes forfeited, if insolvency proceedings were applied for Partner or if such proceedings were rejected due to no funds or if Partner's deletion or liquidation was applied for or registered in the commercial register;
 - if Partner severally or grossly infringes material contractual obligations;
 - if Partner violates the provisions under I. cl. 3.6, 4.5 as well as 5. – 9. above.

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