



# **PROACT**

## **Terms and Conditions for the Supply of Goods and Services**

**Proact IT Group AB - v.2.1**

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## Contents

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|   |    |
|---|----|
| 1. INTERPRETATION.....                        | 3  |
| 2. BASIS OF CONTRACT .....                    | 4  |
| 3. CUSTOMER'S OBLIGATIONS .....               | 4  |
| 4. GOODS .....                                | 5  |
| 5. DELIVERY .....                             | 6  |
| 6. OWNERSHIP AND RISK.....                    | 7  |
| 7. SERVICES GENERALLY.....                    | 7  |
| 8. SUPPORT SERVICES.....                      | 7  |
| 9. EXCLUDED MAINTENANCE.....                  | 7  |
| 10. CHARGES AND PAYMENT .....                 | 8  |
| 11. INTELLECTUAL PROPERTY RIGHTS .....        | 9  |
| 12. CONFIDENTIALITY AND DATA PROTECTION ..... | 9  |
| 13. LIMITATION OF LIABILITY .....             | 10 |
| 14. TERMINATION .....                         | 10 |
| 15. CONSEQUENCES OF TERMINATION .....         | 11 |
| 16. NOTICES .....                             | 11 |
| 17. DISPUTE RESOLUTION .....                  | 11 |
| 18. LEGAL INVALIDITY .....                    | 11 |
| 19. GENERAL.....                              | 12 |
| 20. COUNTRY SPECIFIC PROVISIONS .....         | 12 |

**THESE TERMS AND CONDITIONS**, together with any additional terms specifically agreed and set out in the Contract set out the basis on which the Supplier shall supply Goods and Services to the Customer.

## GENERAL TERMS

### 1. INTERPRETATION

1.1 Definitions. In these Terms, the following definitions apply:

- 1.1.1 Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers to the other party concerning the existence and terms of this agreement or any information that would be regarded as confidential by a reasonable business person relating to the business, affairs, customers, clients, suppliers, plans, intentions, operations, processes, product information, know-how, designs, trade secrets or software or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).
- 1.1.2 Contract: an agreement for the provision of Goods and/or Services by the Supplier to the Customer agreed in accordance with clause 2.1 and which incorporates these Terms
- 1.1.3 Customer: the person or firm who purchases the Goods and/or Services from the Supplier.
- 1.1.4 Customer'(s) Data: means the data and information provided by the Customer in connection with the Contract.
- 1.1.5 Data Protection Legislation: means the EU Data Protection Directive 95/46/EC and Regulation (EU) 2016/679 (as amended, extended or re-enacted from time to time) together with all other applicable law, regulations and codes of conduct in the relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by any relevant regulator.
- 1.1.6 Good Working Order: means operating in accordance with the operating manuals and applicable manufacturer specifications.
- 1.1.7 Goods: the goods (or any part of them) supplied by the Supplier to the Customer under the Contract.
- 1.1.8 Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.1.9 Location: the location(s) of the Maintained Equipment at the Customer's premises as set out in the Contract, or any other locations as may be agreed by the parties in writing from time to time.
- 1.1.10 Maintained Equipment: any equipment (including parts and/or component parts) in respect of which the Supplier has agreed to provide support services.
- 1.1.11 Maintenance: means making any adjustments, replacements and/or repairs required in order to restore the Maintained Equipment to Good Working Order.
- 1.1.12 Proact Group: Proact IT Group AB (Publ) (org no: 556494-3446) a publicly listed corporation incorporated in accordance with the laws of Sweden and with its principal place of business at Kistagången 2, Box 1205, SE-164 28, Kista, Sweden
- 1.1.13 Representative: an employee of or worker for the Customer or the Supplier appointed from time to time to represent that party and who has authority to make decisions as to the operation of the Contract.
- 1.1.14 Services: the professional services and/or support services provided by the Supplier to the Customer under the Contract.

- 1.1.15 Supplier: the subsidiary legal entity of the Proact Group which is set out in the Contract and which is to provide the Goods and/or Services set out therein to the Customer;
  - 1.1.16 Supplier Materials: has the meaning set out in clause 3.1.7.
  - 1.1.17 Terms: the terms set out in this document.
  - 1.1.18 Third Party Products: Goods or Services provided by the Supplier under the Contract which are manufactured, developed or delivered by a third party who is not a party to the Contract.
- 1.2 Construction. In these Terms, the following rules apply:
- 1.2.1 clause and section headings shall not affect the interpretation of the Terms or any Contract;
  - 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
  - 1.2.3 a reference to a party includes its successors or permitted assigns;
  - 1.2.4 a reference to a law shall be construed as a reference to such law or as contained in any subsequent re-enactment thereof;
  - 1.2.5 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.2.6 a reference to writing or written includes e-mails;
  - 1.2.7 in the event of any contradiction between terms and conditions set out or agreed to in a Contract or these Terms, the terms and conditions in a Contract shall take precedence; and
  - 1.2.8 all of these Terms shall apply to the provision of both Goods and Services except where application to one or the other is specified.
- 2. BASIS OF CONTRACT**
- 2.1 A Customer purchase order shall constitute an offer by the Customer to purchase the Goods and/or Services set out therein in accordance with the quotation (if any) provided by the Supplier, and these Terms. The order shall only be deemed to be accepted by the Supplier when the Supplier either issues a written acceptance of the Order, or definitively processes it internally, at which point and on which date the Contract shall come into existence.
  - 2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not incorporated within the Contract.
  - 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force unless specifically incorporated.
  - 2.4 These Terms apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Customer specifically acknowledges that any terms which they purport to impose in their purchase order shall not apply unless the Supplier specifically agrees to them in writing.
  - 2.5 Any quotation given by the Supplier shall not constitute an offer and may be withdrawn at any time by the Supplier.
  - 2.6 The Supplier shall have the right to make any changes to the specification of Goods and/or Services which are necessary to comply with any applicable law, regulatory or safety requirement, and shall notify the Customer in any such event as soon as reasonably practical.
- 3. CUSTOMER'S OBLIGATIONS**
- 3.1 The Customer shall:
    - 3.1.1 ensure that the terms of the Contract and any specification(s) submitted by the Customer are complete and accurate;
    - 3.1.2 co-operate with the Supplier in all matters relating to the Contract;
    - 3.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to carry out its obligations under the Contract;

- 3.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Goods and/or Services, to include any health and safety rules and regulations and any other reasonable security requirements, and shall ensure that such information is accurate in all material respects;
  - 3.1.5 prepare the Customer's premises for the supply of the Goods and/or Services;
  - 3.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and/or Services before any start or delivery date agreed with the Supplier;
  - 3.1.7 keep and maintain all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
  - 3.1.8 install and comply with the terms of any software licence agreement which is supplied by the Supplier under the terms of the Contract and shall sign and return to the Supplier any physical (as opposed to 'click-wrap' or 'shrink-wrap') software licence agreement within 7 days of installing the relevant software;
  - 3.1.9 provide support feedback upon request and the Supplier is hereby authorised to submit the same to third parties on the Customer's behalf without further notice to the Customer.
- 3.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 3.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Contract until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
  - 3.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 3.2; and
  - 3.2.3 the Customer shall reimburse the Supplier on written demand for any reasonable costs or losses sustained or incurred by the Supplier arising directly from the Customer Default.

If the Contract includes the supply of Goods, the following provisions 4 to 6 inclusive will apply:

## **4. GOODS**

- 4.1 The Supplier warrants that on delivery the Goods shall:
  - 4.1.1 conform with their description as set out in the Contract;
  - 4.1.2 be free from defects in design, material and workmanship;
  - 4.1.3 be fit for any purpose held out by the Supplier; and
  - 4.1.4 comply with all applicable legal requirements
- 4.2 Subject to clause 4.3, if:
  - 4.2.1 the Customer gives notice in writing within 14 days of delivery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
  - 4.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
  - 4.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business,
  - 4.2.4 then the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
  - 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2.1;
  - 4.3.2 the defect arises because the Customer failed to follow the Supplier's written instructions or (if there are none) good trade practice as to the storage, installation, commissioning, use or maintenance of the Goods;
  - 4.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

- 4.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 4.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable legal requirements.
- 4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 These Terms shall apply to any repaired or replacement Goods supplied by the Supplier under clause 4.2.
- 4.6 Where Goods provided to the Customer include any Third Party Products the Supplier shall, so far as it is able to do so, ensure that the benefit of any warranty in respect of such products received from the vendor thereof is provided for the benefit of the Customer. No warranty shall be provided by the Supplier to the Customer directly in respect of any Third Party Product and any such warranty whether express or implied is hereby excluded to the fullest extent permitted by law.
- 4.7 To the extent that Goods are to be provided in accordance with a written specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of such specification. This clause shall survive termination of the Contract.

## **5. DELIVERY**

- 5.1 The Supplier shall only be obliged to deliver Goods to the location set out in the Contract. If the Customer requests and the Supplier agrees to change the location after placing an order then the Supplier shall be entitled to levy a reasonable additional charge.
- 5.2 Delivery of the Goods shall be completed on the Goods' arrival at the agreed delivery location.
- 5.3 The price for Goods shall be as set out in the Contract. Unless otherwise specifically stated all charges quoted are Ex Works (EXW) per Incoterms 2010 Rules.
- 5.4 Any dates quoted for delivery of the Goods are estimates only, and are not binding conditions of the Contract unless stated to be so.
- 5.5 If the Supplier fails to deliver the Goods, its liability shall be limited to the price of the Goods plus the reasonable costs and charges incurred by the Customer over and above the price of the Goods in obtaining replacement goods of similar description and quality in the cheapest market available.
- 5.6 The Supplier shall have no liability for any failure or delay in delivery to the extent that such failure or delay results from events, circumstances or causes beyond its reasonable control or from the Customer's failure to comply with its obligations under these Terms.
- 5.7 If the Customer fails to accept or take delivery of the Goods, then except where such failure or delay result from events, circumstances or causes beyond its reasonable control or from the Supplier's failure to comply with its obligations under the Contract in respect of the Goods the Supplier shall store the Goods until delivery can take place, and charge the Customer for all related costs and expenses (including insurance) and the costs of redelivery.
- 5.8 If 28 days after the Supplier has notified the Customer that the Goods are ready for delivery the Customer has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.10 Where Goods are supplied for export from the country in which the Supplier is located the Customer shall be responsible for complying with any legislation governing the importation of the Goods into the country of destination and shall be responsible for the payment of any duties which fall due as a result.

## 6. OWNERSHIP AND RISK

- 6.1 Risk in the Goods shall transfer to the Customer on completion of delivery.
- 6.2 Ownership of the Goods shall not transfer to the Customer until the Supplier has received payment in full for the Goods.

If the Contract includes the provision of Services, the following provision 7 will apply:

## 7. SERVICES GENERALLY

- 7.1 The Supplier warrants that the Services will be provided using reasonable care and skill.
- 7.2 The Supplier shall:
  - 7.2.1 provide the Services in accordance with the Contract; and
  - 7.2.2 use reasonable commercial endeavours to meet any performance dates for Services specified in the Contract, but any such dates shall be estimates only and are not binding conditions of the Contract unless stated to be so;
  - 7.2.3 use reasonable endeavours to observe, all health and safety rules and regulations and any other reasonable security requirements that apply at the Location and that have been communicated to it under clause 3.1.4, provided that it shall not be liable under this agreement if, as a result of such observation, it is in breach of any of its obligations under this agreement.

If the Contract includes the provision of Support Services, the following provisions 8 and 9 will apply:

## 8. SUPPORT SERVICES

- 8.1 The Customer shall notify the Supplier in the event that the Maintained Equipment is malfunctioning, has failed or is otherwise not in Good Working Order.
- 8.2 On a notification from the Customer pursuant to clause 8.1 the Supplier shall use reasonable commercial endeavours to:
  - 8.2.1 attend at the Location within the response time set out in the Contract; and
  - 8.2.2 make any adjustments, replacements and/or repairs required in order to restore the Maintained Equipment to Good Working Order
- 8.3 All spare parts and/or replacements provided by the Supplier to the Customer shall become part of the Maintained Equipment and the property of the Customer. All parts and components removed from the Maintained Equipment by the Supplier in the course of performing Maintenance shall no longer constitute part of the Maintained Equipment and will be the property of the Supplier.
- 8.4 The Supplier is not obliged to perform any Maintenance in respect of any equipment not specifically within the scope of support services as set out in the Contract.
- 8.5 Unless expressly provided otherwise in the Contract, consumable items (including but not limited to removable storage media and batteries) and/or any operating system or other software installed on the Maintained Equipment are excluded from the scope of the Supplier's obligation to provide Maintenance:

## 9. EXCLUDED MAINTENANCE

- 9.1 The Supplier is not obliged to perform any Maintenance where the malfunction or failure results from or is caused by:
  - 9.1.1 any defect existing prior to the commencement of the Contract pursuant to clause 2.1;
  - 9.1.2 a latent defect in a manufacturer's design;
  - 9.1.3 use in conjunction with computer equipment or materials not supplied by or approved in writing to be used by the Supplier;
  - 9.1.4 any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its subcontractors, employees or agents;
  - 9.1.5 use in breach of any of the provisions of the Contract or manufacturer recommendations; or
  - 9.1.6 neglect or misuse.
- 9.2 Where the Supplier performs Maintenance in circumstances where it is established that such Maintenance was required as a result of any of the causes set out in clauses 9.1.1 to 9.1.6, the Supplier shall be entitled to charge the Customer for such services at its normal daily rate from time to time.

- 9.3 The Supplier shall use its best endeavours to carry out the Maintenance but if in the reasonable opinion of the Supplier, it becomes uneconomical to continue to provide the Maintenance due to:
- 9.3.1 the equipment's condition (where this is due to causes beyond the Supplier's control); or
  - 9.3.2 the non-availability at a reasonable price of parts or manufacturer's support for the equipment.
- then the Supplier may, upon a minimum of 60 days' notice in writing to the Customer, discontinue the Maintenance in whole, or in part.
- 9.4 If the Supplier discontinues Maintenance in accordance with clause 9.3 then the charges payable by the Customer in respect of the Support Services shall be reduced accordingly from the date on which the Supplier discontinues the Maintenance.
- 10. CHARGES AND PAYMENT**
- 10.1 The charges for Services shall either be based on a time and materials basis, or be fixed and shall be at a price as set out in the Contract.
- 10.2 Where the Services are to be provided on a time and materials basis:
- 10.2.1 the Charges shall be calculated in accordance with the Supplier's standard daily rate from time to time.
  - 10.2.2 the Supplier shall be entitled to charge a higher reasonable daily fee rate where the Services are carried out outside normal business hours;
- 10.3 In the event that the Customer cancels the Services (whether temporarily or indefinitely) then:
- 10.3.1 the following cancellation charges shall immediately become due and payable by the Customer to the Supplier:
    - 10.3.1.1 cancellation within up to 24 hours of work commencing, 75% of invoice value;
    - 10.3.1.2 cancellation within 24 up to 96 hours of work commencing, 50% of invoice value; or
    - 10.3.1.3 cancellation exceeding 96 hours of work commencing, 25% of invoice value; and
  - 10.3.2 the Customer shall be liable to the Supplier for all costs and charges reasonably incurred by the Supplier in fulfilling the order up until the date of receipt of the amendment or cancellation.
- 10.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.5 The billing profile shall be as set out in the Contract. If no profile is specified then where the Supplier is charging a fixed price the Supplier shall be entitled to invoice the Customer on completion of the Services and where the Supplier is charging on a time and materials basis the Supplier shall deliver invoices monthly in arrears.
- 10.6 In the event that vendor support reinstatement fees are incurred as a result of Customer's delay in placing an order, then such fees shall be charged by the Supplier to the Customer in full in addition to other charges payable.
- 10.7 The Customer shall pay each invoice submitted by the Supplier:
- 10.7.1 within 30 days of the date of the invoice;
  - 10.7.2 time for payment shall be a binding condition of the Contract.
- 10.8 The charges and all other payments set out in these Terms are exclusive of any applicable tax, levy, impost, duty, charge or fee. The Customer shall pay any such sums in addition to the Contract charges at the rate and in the manner prescribed by law from time to time.
- 10.9 The Customer shall make all payments due under these Terms without withholding or deduction of any applicable tax, levy, impost, duty, charge or fee unless required by law. If any such withholding or deduction is required the Customer shall, when making the payment to which the withholding or deduction relates, pay to the Supplier such additional amount as will ensure that the Supplier receives the same total amount that it would have received if no such withholding or deduction had been required.
- 10.10 Interest shall be payable on any late payments of the Charges or any other sums due from the Customer to the Supplier under these Terms at the rate of 8% per annum above



- the Euro Interbank Offered Rate (Euribor) 12 month lending rate or any applicable statutory interest rate, whichever is higher.
- 10.11 The Customer shall not be entitled by reason of any set off, counter-claim, abatement, or other similar deduction to withhold payment of any undisputed amount which is due to the Supplier.
- 11. INTELLECTUAL PROPERTY RIGHTS**
- 11.1 Intellectual Property Rights owned by either party or their suppliers prior to entering into the Contract shall not be transferred and shall remain in the ownership of the original party.
- 11.2 New Intellectual Property Rights arising out of or in connection with the Services shall be owned by the Supplier unless creation of the Intellectual Property Rights is the subject of the Contract.
- 11.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on compliance with the licence terms of the third party and undertakes to comply with such terms.
- 11.4 All Supplier Materials are the exclusive property of the Supplier.
- 11.5 Subject to the provisions of this clause and to clause 13 the Supplier shall indemnify and hold harmless the Customer against all damages, losses, liabilities, demands, and expenses resulting from any judgment or award that the receipt, possession and/or use (in accordance with the specification set out in the Contract) of the Goods and/or Services infringes any valid third party Intellectual Property Rights in the European Economic Area.
- 11.6 To benefit from the indemnity in clause 11.5 the Customer must:
- 11.6.1 promptly provide the Supplier and its advisors reasonable access to premises and personnel and to all relevant assets, accounts, documents and records that it possesses or controls (with the right to take copies) for the purposes of investigating the matter;
- 11.6.2 allow the Supplier (at its request) to use its chosen advisers and to have the exclusive conduct of the proceedings;
- 11.6.3 make no admission of liability or any other statement in respect of or settle the matter without obtaining the Supplier's prior written consent (not to be unreasonably withheld or delayed); and
- 11.6.4 promptly take any action and give any information and assistance as the Supplier may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party the Customer's rights in relation to the matter.
- 11.7 If any element of the Goods and/or Services does, or in the Supplier's reasonable opinion is likely to, infringe the Intellectual Property Rights of a third Party, the Supplier shall at its expense and option either: (a) procure the right for the Customer to continue using it; (b) replace it with non-infringing equivalents; (c) modify it to make it non-infringing; or (d) terminate that element of the Contract without further liability to the Customer.
- 12. CONFIDENTIALITY AND DATA PROTECTION**
- 12.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any Confidential Information of the other party or of any member of the group of companies to which the other party belongs, except:
- 12.1.1 to its own employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this agreement. Each party shall procure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause; or
- 12.1.2 as may be required by law, a court of competent jurisdiction, any governmental or regulatory authority, or under the rules of any Stock Exchange on which a party's shares are listed.
- 12.2 No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.
- 12.3 The Supplier warrants to the Customer that in processing the Customer's Data and discharging its obligations under the Contract it shall comply with all applicable Data Protection Legislation. Without prejudice to the generality of the foregoing:

- 12.3.1 it shall process the Customer's Data only in accordance with the written instructions of the Customer and to the extent, and in such a manner, as is reasonably necessary to carry out its obligations under the Contract or as is required by any applicable law and shall not otherwise process the Customer's Data (including any personal data contained therein) for its own purposes;
- 12.3.2 it shall implement reasonable technical and organisational measures to protect the Customer's Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure, and upon the request of the Customer, shall provide such data and information as the Customer may reasonably require to satisfy the Customer that these technical and organisational measures are implemented;
- 12.3.3 it shall not (and shall ensure that its personnel do not) publish, disclose or divulge any Customer's Data to any third Party, nor allow any third Party to process Customer's Data on the Supplier's behalf without the prior written consent of the Customer;
- 12.3.4 it shall not transfer Customer's Data outside the European Economic Area without the prior written consent of the Customer and any such transfer shall comply with all applicable Data Protection Legislation; and
- 12.3.5 it shall use reasonable commercial endeavours to assist the Customer with any request that the Customer receives from any subject of the Customer Data for access to that Customer Data processed by the Supplier under the Contract.

### **13. LIMITATION OF LIABILITY**

- 13.1 Nothing in these Terms shall limit or exclude either party's liability to the other for:
  - 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 13.1.2 fraud or fraudulent misrepresentation; or
  - 13.1.3 any other liability which cannot lawfully be excluded or limited.
- 13.2 Subject to clause 13.1:
  - 13.2.1 the Customer and the Supplier's respective total aggregate liability to the other under any indemnity or under the provisions of clause 12 shall be limited in aggregate to £5,000,000; and
  - 13.2.2 each party's total liability to the other in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or any other theory of liability, shall be limited to the total amount payable by the Customer under the terms of the Contract.
- 13.3 Subject to clause 13.1, other than under an indemnity neither party shall be liable to the other for any loss of profit, loss of data, or any indirect or consequential loss arising under or in connection with the Contract.
- 13.4 This clause 13 shall survive termination of the Contract.

### **14. TERMINATION**

- 14.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 14.1.1 the other party commits a breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 14.1.2 the other party is insolvent or takes any step or action in connection with its entering any form of insolvency protection, administration, liquidation or any other composition or arrangement with its creditors; or
  - 14.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 14.2 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
  - 14.2.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

- 14.2.2 the Customer becomes subject to any of the events listed in clause 14.1.2 to clause 14.1.3, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- 15.1 the Customer shall within 30 days of the date of termination pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer within 30 days of receipt;
- 15.2 the Customer shall return all of the Supplier Materials;
- 15.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 16. NOTICES

- 16.1 Any notice required to be given in writing to a party under or in connection with the Contract shall be given in writing which shall (on the part of the Supplier) include notification by way of email to [legal@proact.co.uk](mailto:legal@proact.co.uk).
- 16.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 17. DISPUTE RESOLUTION

- 17.1 Subject to the provisions of clause 17.2, any dispute arising under, or in connection with these Terms other than a dispute relating solely to the non-payment of Charges by the Customer shall be dealt with in accordance with this clause.
- 17.2 Clause 17.1 shall be without prejudice to the rights of termination stated in clause 14 and in addition shall not prevent the Customer or the Supplier from applying for interlocutory injunctive relief in any court of competent jurisdiction in the case of:
- 17.2.1 breach or threatened breach of confidentiality;
- 17.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
- 17.2.3 infringement or threatened infringement of the Intellectual Property Rights of any third Party, where such infringement could expose the Customer or the Supplier to liability.
- 17.3 All disputes between the parties arising out of or relating to the Contract or these Terms shall initially be referred to the Representatives of the parties for informal resolution. If a dispute remains unresolved, within 14 days then the parties will convene a without prejudice meeting of the management of each party within a further 14 days to further attempt to resolve the matter informally. If the dispute still remains unresolved, then within 14 days of the first without prejudice meeting the parties will convene a second without prejudice meeting of the senior management of the Customer and the Proact Group within a further 14 days to finally attempt to resolve the matter informally.
- 17.4 If a dispute remains unresolved after following the informal processes set out in clause 17.3 or a party fails to observe the processes set out therein upon the request of the other party then the parties shall first refer the dispute to proceedings under the SCC Mediation Rules<sup>1</sup>. If the dispute has not been settled pursuant to the said Rules within 60 days following the filing of a request for mediation or within such other period as the parties may agree in writing, such dispute shall thereafter be finally settled through the courts.

## 18. LEGAL INVALIDITY

- 18.1 The Customer and the Supplier expressly agree that should any limitation or provision contained in these Terms be held to be invalid under law, it shall to that extent be deemed to be omitted but, if either the Customer or the Supplier thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

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<sup>1</sup> Available at <http://www.sccinstitute.com/dispute-resolution/rules/>.

- 18.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable
- 19. GENERAL**
- 19.1 Credit information: The Supplier shall be entitled to conduct searches with credit reference agencies in respect of the Customer from time to time and to keep a record of the results.
- 19.2 Assignment and subcontracting: Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the party (such consent not to be unreasonably withheld).
- 19.3 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it
- 19.4 Force majeure: Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.
- 19.5 Waiver and cumulative remedies: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 19.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Variation: Except as set out in these Terms, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by a Representative of both parties
- 19.8 Execution Formalities: The Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery. The parties further agree that they may conduct business transactions using electronic documents and electronic signatures and that any agreement signed electronically using the Adobe EchoSign Service shall for all purposes be deemed to be validly executed by the party or parties so signing.
- 19.9 Law and Jurisdiction: The Contract shall be governed by and construed according to the law of the country of legal domicile of the Supplier. Save as provided in clause 17 the Customer and the Supplier accept the exclusive jurisdiction of the courts of the country in which the Supplier is legally domiciled.

## COUNTRY SPECIFIC PROVISIONS

### 20. COUNTRY SPECIFIC PROVISIONS

The following provisions of these Terms shall have effect only if the Supplier or the Customer (as applicable) is legally domiciled in the country set out in the provision. To the extent only of any contradiction between the provisions in clauses 1 to 19 and the following clauses, the following clauses shall have priority.

- 20.1 If the Supplier is legally domiciled in the **Netherlands** the following provisions shall apply:
- 20.1.1 The Customer and the Supplier accept the exclusive jurisdiction of the courts of Amsterdam.
- 20.2 If the Customer is legally domiciled in **Spain** the following provisions shall apply:

- 20.2.1 The Supplier shall (i) apply to the Customer Data the data security measures contained within article 79 to 114 of Spanish Royal Decree 1720/2007; (ii) not share the Customer Data except in case of sub-contracting services strictly under the terms established by article 21 of Spanish Royal Decree 1720/2007; and (iii) upon completion of the Contract, return all Customer Data to the Customer except where the retention of such data is permitted by applicable law.
- 20.3 If the Supplier is legally domiciled in **Germany** the following provisions shall apply:
- 20.3.1 For all Goods and/or Services which are the subject matter of an acceptance the following shall apply:
- 20.3.1.1 any warranty claims shall be limited to a period of one (1) year upon delivery; and
- 20.3.1.2 the right to demand damages for material defects shall be excluded.
- 20.3.2 The Customer accepts that maintenance of the Goods and/or Services will be required from time to time and that the Supplier is not responsible for non-availability of the Goods and/or Services caused by such maintenance, or causes beyond their immediate control and out of the specific scope set out in the Order. The Supplier shall not be liable for such non-availability.
- 20.3.3 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of German data protection legislation]
- 20.3.4 Clauses 13.1 and 13.3 shall be deleted in their entirety and shall be replaced with the following new clauses;
- “13.1. The Supplier is subject to unlimited liability for any damages caused by grossly negligent or willful misconduct of Supplier, or its legal representatives or agents, as well as for damages resulting from any wrongful harm to life, limb or health.
- 13.2. The Supplier also assumes liability for any damages caused by ordinary negligence if, and solely to the extent, the Supplier breaches any material obligation under these Terms. Material obligations under these Terms are obligations which are essential for the achievement of the purpose of the terms and on which the Customer may reasonably rely. In such cases, the Supplier's liability shall be limited to damages reasonably foreseeable at the time the parties entered into the agreement.
- 13.3. The foregoing limitations of liability shall also inure to the benefit of the Supplier's legal representatives and employees, and shall also apply in cases involving liability for culpa in contrahendo or tort.
- 13.4. Any liability for damages under the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected hereby.
- 13.5. Any liability of the Supplier for lost data shall be limited to compensatory damages in the amount necessary for restoration of the data using electronic backup media. The obligation of Customer to back-up data on a regular basis according to the state of the art shall remain unaffected thereby.
- 13.6. Unless provided otherwise in these Terms, any and all claims of Customer against the Supplier shall be subject to a limitation period of one year from the date of accrual and the date on which Customer discovered or, absent recklessness on the part of Customer, would have discovered the circumstances giving rise to the claim, except for claims defined in subsections 13.1, 13.2 or 13.4 above.”
- 20.4 If the Supplier is legally domiciled in **Sweden** the following provisions shall apply:
- 20.4.1 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of the Swedish Personal Data Act (Sw. Personuppgiftslag (1998:204)).
- 20.5 If the Supplier is legally domiciled in the **Czech Republic** the following provisions shall apply:
- 20.5.1 The parties agree to exclude the applicability of the following sections of the Act. Np. 89/2012 Coll., the Civil Code: section 1751 para. 2 (knock-out rule for battle of forms rather than no contract), sections 1765 and 1766 (so that both parties shall bear the risk of change in circumstances and none of them is entitled to invoke potential change of circumstances, 1799 and 1800 (rules applicable for boilerplate

- contracts), 1919 -1925 (liability for defects) and 2002 (withdrawal from a contract in case of a material breach).
- 20.6 If the Supplier is legally domiciled in **Norway** the following provisions shall apply:
- 20.6.1 In respect of data processed by the Supplier in accordance with the terms of these Terms, the Supplier shall act as Data Processor and the Customer shall act as Data Controller within the meaning of the Personal Data Act.
- 20.6.2 The parties agree to enter into a further agreement governing the sharing and processing of Customer Data as may be necessary in order to comply with the requirements of Norwegian data protection legislation]
- 20.6.3 The Supplier shall comply fully with the security requirements of section 13 of the Personal Data Act.
- 20.7 If the Supplier is legally domiciled in **Belgium** the following provisions shall apply:
- 20.7.1 One original copy of the contract shall be executed for each party to the contract in accordance with Belgium law governing the execution of contracts.
- 20.8 If the Supplier is legally domiciled in **Scotland** the following provisions shall apply:
- 20.8.1 The Contract shall be governed by and construed according to the laws of England and Wales and, subject to clause 17 the Customer and the Supplier accept the exclusive jurisdiction of the courts of England and Wales.
- 20.9 If the Supplier is legally domiciled in the **United States of America** the following provisions shall apply:
- 20.9.1 The Contract shall in all respects be interpreted under, and governed by, the laws of the State of Illinois including as to validity, interpretation and effect, without giving effect to the State of Illinois' conflicts of laws principles.
- 20.9.2 Subject to clause 17, the Customer and the Supplier accept the exclusive jurisdiction of the state and federal courts located in the State of Illinois, and each party irrevocably accepts and submits to the sole and exclusive personal jurisdiction of such courts, generally and unconditionally with respect to any action, suit or proceeding brought by or against it by the other party, and waives any objection to the venue or jurisdiction of those courts. The terms of this clause shall apply regardless of the country of origin of any dispute. Nothing herein shall be deemed to limit a party's right to remove a dispute from a state court to a federal court with appropriate jurisdiction.
- 20.9.3 The parties agree that, to the extent not expressly prohibited by law, the United Nations Convention on Contracts for the International Sale of Goods 1980, and all international and domestic legislation implementing such Convention, shall not apply to the Contract.
- 20.10 If the Supplier is legally domiciled in **Estonia** the following provisions shall apply:
- 20.10.1 Clause 5.8 shall be replaced with the following:  
"If 28 days after the Supplier has notified the Customer that the Goods are ready for delivery, and 14 days after the Supplier has repeatedly notified the Customer that the Goods are ready for delivery, the Supplier may withdraw from the Contract in respect to said Goods."
- 20.10.2 In Clause 10.10, the text "Euro Interbank Offered Rate (Euribor) 12 month lending rate" shall be replaced with "last interest rate applicable to the main refinancing operations of the European Central Bank before 1 January or 1 July of each year".
- 20.10.3 In Clauses 10.7.1 and 15.1, the time-limits shall be 14 days instead of 30 days.
- 20.10.4 Clause 11.2 shall be amended with the following sub clauses:  
"11.2.1 The parties acknowledge that Estonian law does not permit the transfer of moral rights that constitute a part of copyright, and thus any obligation to transfer such rights under the Contract shall be considered fulfilled when an exclusive licence concerning such rights is granted.  
11.2.2. When the parties agree to transfer or license any new Intellectual Property Rights arising out of or in connection with the Services, the Supplier undertakes to obtain the respective rights, or a licence that permits sublicensing of said rights, from its employees and subcontractors as appropriate."
- 20.10.5 In clauses 13.2.1 and 13.3, references to indemnity are clarified to include specific references to indemnities set out in clauses 4.7 and 11.5.
- 20.10.6 Clause 16.2 is amended with "In such cases, the parties follow the document delivery rules set out in the Estonian Code of Civil Procedure or in case of arbitration, the applicable rules of the court of arbitration."

- 20.10.7 If both the Supplier and the Customer are legally domiciled in **Estonia**:  
In Clause 19.8 the text “Transmission of an executed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery. The parties further agree that they may conduct business transactions using electronic documents and electronic signatures and that any agreement signed electronically using the Adobe EchoSign Service shall for all purposes be deemed to be validly executed by the party or parties so signing.” is replaced with “The parties accept digital signatures as being equivalent to handwritten signatures.”