

## Terms and Conditions

### For Commercial and Professional Use

2020-03-01, version 1.00

#### Article 1 - Applicability of the Terms and Conditions

1. The provisions of these Terms and Conditions apply to all legal relationships and/or (other) agreements between ProSim and the Customer for acquiring a License Agreement for the benefit of the Licensee.
2. The provisions of the EULA apply to all legal relationships and/or (other) agreements between ProSim and the Licensee for the use of the Software. The provisions also apply to all legal relationships and/or (other) agreements between ProSim and the Customer if and insofar the subject matter is not or not sufficiently covered by the Terms and Conditions. In the event that any provision of the Terms and Conditions is in conflict with the EULA, the provision contained in these Terms and Conditions prevail.
3. Deviations from and additions to Terms and Conditions shall only be valid if they are agreed upon with ProSim in writing.
4. The applicability of any (general) purchasing or other conditions of Customer are specifically excluded.
5. All offers and other communications are subject to confirmation by ProSim unless ProSim has indicated otherwise in writing.
6. If any provision of these Terms and Conditions is null and void or is voided, the other provisions of these Terms and Conditions shall remain fully in effect. ProSim and the Customer shall in such case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

#### Article 2 - Definitions

1. In these Terms and Conditions the following terms shall apply in the following meaning:

**Customer:** the person or legal entity that has concluded an agreement with ProSim, subject to the Terms and Conditions, for the delivery of a license to use the Software, and possibly an Update Subscription for the benefit of the Licensee. The Customer may be a Partner, a Training Device Manufacturer or it may be the Licensee itself;

**Custom Price Arrangements:** provisions and/or agreement on the price(s) due by Customer made in writing specifically for certain specified circumstances and/or for a specific Customer in deviation or addition to the Customer Order Confirmation;

**EULA:** the End User License Agreement between ProSim and the Licensee consisting of the EULA itself and the License Certificate thereto containing the type and details of the license granted, the registered Flight Simulation Device, the identity of the Licensee and other particulars of the agreement;

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	Chamber Commerce:	54069645	VAT number:	NL851144706B01

**Flight Simulation Device:** the equipment with a specific and unique identifier such as the simulator serial number, as registered with ProSim on which the Software may be installed and/or used by Licensee;

**Licensee:** the person or legal entity that is entitled to operate the Software in accordance with the applicable EULA and provided the Licensee is registered as such with ProSim. The Licensee may or may not be a Customer;

**List Price:** the price of a Product applicable to a (potential) Licensee and basis for price calculation of an Update Subscription;

**Order Intake Form:** the form provided by ProSim for the benefit of notifying ProSim of a Customer order;

**Order confirmation:** the confirmation in writing by ProSim of the order by Customer detailing the particulars of the agreement;

**Price List:** statement of List Prices per Product and other related information and as regularly (e.g. each year) updated by ProSim;

**ProSim:** the ProSim corporation named in the Customer Order Confirmation or that has otherwise entered into the agreement under the applicability of the Terms and Conditions with Customer or – if not mentioned therein – ProSim Aviation Research B.V.;

**Software:** the flight simulation software provided by ProSim;

**Terms and Conditions:** the Terms and Conditions of ProSim applicable to the agreement with the Customer in connection with the Customer Order Confirmation;

**Training Device Manufacturer:** a (TDM) manufacturer and/or supplier of a flight simulation (training) device;

**Update Subscription:** the (optional) paid subscription under which Licensee is granted the right to use updated versions of the Software that are made available by ProSim under the agreed provisions and for the agreed period;

**User(s):** person(s) acting under or that are deemed to be acting under the responsibility of Licensee in the broadest sense of the word, bound by the EULA and without prejudice to the user's own responsibility;

### Article 3 - Price and payment

1. All prices are exclusive of value added tax (sales tax) and other levies imposed by the government. All prices stated by ProSim are in euros (EUR) and the Customer shall make all payments in euros.
2. Payment shall take place before delivery to Customer or Licensee, unless agreed otherwise.
3. List Prices are due unless otherwise agreed. Any custom price arrangements are related to List Prices and are granted subject to timely payment of amounts due.
4. The parties may agree on payment by instalments but only and insofar as this has been agreed upon in writing. Instalments must be paid by the Customer in accordance with the agreed payment terms.
5. If the Customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable or obligated towards ProSim for performance of the agreement.

6. Information from ProSim's records shall count as conclusive evidence with respect to the performance delivered by ProSim and the amounts owed by the Customer for delivery of this performance, without prejudice to the Customer's right to produce evidence to the contrary.
7. If a periodic payment obligation on the part of the Customer applies, ProSim shall always be entitled to adjust, in writing and with due observance of a term of at least three months, the applicable prices, rates and discounts. If the Customer does not agree to the adjustment in this latter case, the Customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.
8. The parties shall record the date or dates on which ProSim shall charge the Customer for the performance agreed in the contract. Amounts owed must be paid by the Customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed.
9. If the Customer fails to pay amounts due or fails to do so on time, the Customer shall owe statutory interest for commercial contracts, as defined by the Government of the Netherlands, on the outstanding amount without a demand for payment or a notice of default being required. If the Customer fails to pay the amount due after a demand for payment or a notice of default has been issued, ProSim shall be entitled to refer the debt for collection, in which case the Customer must pay all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to ProSim's other legal and contractual rights.
10. Rights granted by ProSim to Customer and by ProSim to the Licensee are subject to timely payment.
11. ProSim is entitled to suspend any and all rights and any and all services provided to Licensee and Customer if payment for amounts due is not timely received by ProSim and after notification of default by ProSim with a maximum term of ten days.
12. If Customer is not the Licensee of the Software ProSim is at all times entitled to directly engage in a similar or additional agreement with the Licensee for the provision of (license) rights, Update subscription and/or services, without any right for Customer for compensation in whatever form.

#### Article 4 – Way of Work, Cooperation and information

1. Any agreement between ProSim and Customer is concluded only by means of a Customer Order Confirmation provided to Customer and a License Certificate provided to Licensee. For the conclusion of contract with a Customer/Licensee the Parties shall make use of the standard documents provided by ProSim, such as:
  - Order Intake Form
  - Customer Order Confirmation
  - License Certificate
  - the EULA (applicable to any and all agreements with a Licensee);
  - the Terms and Conditions (applicable to any and all agreements with the Customer);
  - Other documents designated by ProSim;
2. The Customer guarantees that the information it has provided or that has been provided on its behalf to ProSim is or are accurate and complete. If the information or specifications provided by the

Customer contain inaccuracies apparent to ProSim, ProSim shall contact the Customer to make enquiries about the matter.

#### Article 5 - Delivery and installation

1. ProSim shall make the software available via the internet as agreed either to the Customer or to the Licensee. At ProSim's discretion, any agreed user documentation shall be made available in digital form.

#### Article 6 - Transfer of Personnel

1. During the term of the agreement and for one year following its termination or expiry, the Customer shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of ProSim who are involved in the performance of the agreement unless ProSim has given prior written permission. Conditions may be attached to this permission, including the condition that the Customer must pay compensation to ProSim.

#### Article 7 - Applicable law and disputes

1. This agreement and any further agreements between ProSim and Customer shall be governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
2. Any dispute that may arise on the basis of this agreement or as a result of further agreements between ProSim and Customer shall be resolved by the Court of Rotterdam (The Netherlands).