ProSim Software Terms and Conditions non-commercial use

ProSim Aviation Research B.V., a corporation under Dutch law, registered with the Dutch Chamber of Commerce under number 54069645 and having its office at Rotterdamseweg 388D, 2629 HG Delft, The Netherlands. These Terms and Conditions are filed with the Chamber of Commerce under number 54069645.

Chapter 1. General provisions

Art. 1 Applicability of these Terms and Conditions

1. These Terms and Conditions apply to all offers and contracts pursuant to which ProSim Aviation Research B.V. (hereafter "supplier") delivers goods and/or provides services of any nature whatsoever and under any name to the customer.
2. These Terms and Conditions shall also apply to the use of the software during an evaluation (trial) licence. For the duration of the evaluation (trial) licence the customer may use the software solely for non-commercial purposes and for the purpose of evaluation. The evaluation (trial) licence will terminate at the end of the evaluation (trial) period.
3. Departures from and additions to these Terms and Conditions shall only be valid if they are agreed between the parties in writing.
4. The applicability of any customer's purchasing or other conditions is specifically excluded.
5. 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. The supplier and the customer shall in such a case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

Art. 2 Price and payment

1. All prices are exclusive of value added tax (sales tax) and other levies imposed by government. All prices stated by the supplier are in euros (EUR) and the customer shall make all payments in euros.
2. 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.
3. If the customer fails to pay amounts due or fails to do so on time, the customer shall owe statutory interest for non-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, the supplier shall be entitled to refer the debt for collection, in which case the customer must pay all judicial and extrajudicial costs. The foregoing shall be without prejudice to the supplier's other legal and contractual rights.
4. Information from the supplier's records shall count as conclusive evidence with respect to the performance delivered by the supplier 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.

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	The Netherlands	Chamber Commerce: 54069645		VAT number:	NL851144706B01

Art. 3 Confidentiality

1. The customer acknowledges that software originating from the supplier is confidential in nature and needs to be handled confidentially.
2. The customer acknowledges that all custom-made agreements, such as price arrangements, are confidential in nature, and need to be handled confidentially.

Art. 4 Privacy and access codes

1. Customer entitles supplier to collect data relevant and necessary for the performance of its duties under the contract. Supplier may collect software user statistics for the purpose of tracing piracy, abuse or misuse of its software.
2. The access- or identification codes and the licence keys provided to the customer by or on behalf of the supplier are confidential and must be treated as such by the customer. The supplier is entitled to change the access- or identification codes of the licence keys for its own use only.
3. The customer is at all times responsible to adequately secure its systems and infrastructure and to have adequate active antivirus software protection.
4. The customer shall be liable for any loss arising from failure to comply with this article.

Art. 5 Reservation of rights

1. Rights shall be granted or transferred to the customer subject to the condition that the customer has paid all amounts owed under the contract.

Art. 6 Risk transfer

1. The risk of loss, theft, misappropriation or damage of items, information (including user names, codes, passwords and licence keys), documents, software or data files that are supplied or used in the context of performing the contract shall pass to the customer at the time at which the customer comes into actual possession of the items and information referred to.

Art. 7 Intellectual property

1. All intellectual property rights to the software made available to the customer under the contract are held exclusively by the supplier, its licensors or its suppliers. The customer shall have the rights of use expressly granted under these Terms and Conditions and the law.
2. The customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software and websites or have any such indication removed or changed.
3. The supplier may always take technical measures to protect software and information made available to the customer for the purpose of limitation of the use by customer in in terms of the content or duration of the right of use of these items. The customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.
4. The supplier indemnifies the customer against any claim of a third party based on the allegation that software or websites or other materials developed by the supplier itself infringe an intellectual property right of that third party, subject to the condition that the customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the supplier. The customer shall provide the powers of attorney and information required to the supplier and assist the supplier to defend itself against such claims. This obligation to indemnity shall not apply if the alleged infringement concerns or is caused by:

   (i) materials made available to the supplier by the customer for use, modification, processing or maintenance;

(ii) changes made or commissioned by the customer in the software, website, data files, equipment or other materials without the supplier's written permission or

(iii) any use of the software that falls outside the scope of the agreed user licence rights and restrictions.

If it is irrevocably established in court that software, websites or other materials developed by the supplier itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of the supplier, there is a good chance that such an infringement is occurring, the supplier shall if possible ensure that the customer can continue to use, or use functional equivalents of, the software, websites, data files, equipment or materials supplied. Any other or further obligation to indemnify on the part of the supplier due to infringement of a third party's intellectual property right is excluded.

Art. 8 Cooperation and information

1. The customer shall itself and under its own responsibility install, organise, parameterise and tune the software and support software required on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.
2. The customer guarantees that the information it has provided or that has been provided on its behalf to the supplier, and that the information on which the supplier has based its offer, is accurate and complete.

Art. 9 Rescission and the right of withdrawal

1. Each party shall only be authorised to rescind the contract due to an attributable failure in the performance of the contract if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach that has been issued, is culpably failing to fulfil essential obligations under the contract. The customer's payment obligations apply in all cases as essential obligations under the contract.
2. If, at the time of rescission, the customer has already received goods or services in the performance of the contract, these goods or services and the associated payment obligations shall not be undone unless the customer proves that the supplier is in default with respect to the essential part of such goods or services.
3. The supplier may rescind the contract in writing, without notice of default being required and with immediate effect, if the customer is abusing its rights under the licence or when customer makes, or cooperates to, unauthorized use of the software.
4. The customer declares to acknowledge the loss of right of withdrawal once the performance of the contract has begun.

Art. 10 Liability

1. The supplier's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the contract concerned (excluding VAT). If the contract is mainly a continuing performance contract with a term of more than one year, the price stipulated for the contract shall be set at the total amount of the payments (excluding VAT) stipulated for one year. The supplier's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 2.500 (two thousand five hundred euros), however.
2. The supplier's total liability for loss due to death or bodily injury or as a result of material damage to items shall never amount to more than EUR 2.500 (two thousand five hundred euros).
3. The supplier's liability for indirect loss, consequential loss, loss of profits, lost savings, reduced goodwill, loss arising from the use of items, materials or software of third parties prescribed by the customer to the supplier

and loss arising from the engagement of suppliers prescribed by the customer to the supplier is excluded. The supplier's liability for corruption, destruction or loss of data or documents is likewise excluded.

4. Supplier's liability for any loss from, or any loss resulting out of, the use of the software other than the use as expressly agreed in these Terms and Conditions, is excluded.

5. The exclusions and limitations of the supplier's liability described paragraphs 1 up to and 4 of this article are entirely without prejudice to the other exclusions and limitations of the supplier's liability described in these Terms and Conditions.

6. The exclusions and limitations referred to in paragraphs 1 up to and including 5 of this article shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of the supplier's management.

7. Unless performance by the supplier is permanently impossible, the supplier shall only be liable due to an attributable failure in the performance of a contract if the customer declares the supplier to be in default in writing without delay and grants the supplier a reasonable term to remedy the breach, and the supplier culpably fails to fulfil its obligations also after this term has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the supplier the opportunity to respond adequately.

8. For there to be any right to compensation, the customer must always report the loss to the supplier in writing as soon as possible after the loss has occurred. Each claim for compensation against the supplier shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the customer has instituted a legal action for damages prior to the expiry of this period.

Art. 11 Force majeure

1. None of the parties shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so by force majeure. Force majeure on the part of the supplier means, among other things:
   (i) force majeure on the part of the suppliers of the supplier;
   (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to the supplier by the customer;
   (iii) defects in items, equipment, software or materials the use of which was prescribed to the supplier by the customer;
   (iv) government measures;
   (v) power failures;
   (vi) internet, data network or telecommunication facilities failures;
   (vii) war and
   (viii) general transport problems.

2. Either of the parties shall have the right to rescind the contract in writing if a situation of force majeure persists for more than 60 days. In such an event, that which has already been performed under the contract shall be paid for on a proportional basis without the parties owing each other anything else.

Art. 12 Transfer of rights and obligations

1. The customer may not sell, transfer or pledge its rights and obligations under these Terms and Conditions to a third party.

2. The supplier is entitled to sell, transfer or pledge to a third party its claims to payment of amounts owed.

Art. 13 Applicable law and disputes

1. This agreement and any further agreement between the supplier and customer shall be governed by Dutch law.
2. Any dispute that may arise on the basis of this agreement or as a result of further agreements between supplier and customer shall be resolved by the Court of Rotterdam (The Netherlands) unless such choice of jurisdiction is not permitted under applicable law.

Chapter 2. The software

Art.14 Licence

1. The software shall only be used for non-commercial purposes. Non-commercial use means private home use.
2. The customer shall refrain from any other use, in particular commercial use of the software. Commercial use is in the respect of that of which it is intended for, or directed towards; commercial advantage, monetary compensation, professional training or educational purposes
3. For usage not defined in paragraph 1 or 2 of this article, or for any commercial use of the software, contact from the customer should be made to the supplier in order to conclude a separate agreement under the prices and terms and conditions for commercial use as determined by the supplier.
4. The customer shall comply strictly, at all times, with the agreed user rights and restrictions. If the customer fails to comply with the agreed user rights and restrictions of non-commercial use, the customer shall be liable towards supplier for a penalty of EUR 2.000 (two thousand euros) for each day the customer fails to comply with the user rights and restrictions with a maximum of EUR 20.000 (twenty thousand euros) per year. This penalty is without prejudice to any other rights and remedies available to the supplier.

Art. 15 User rights

1. The supplier shall make the software available to the customer on the basis of a licence for use.
2. The licence for use renders the customer a perpetual right to use the software provided. The right to use the software is non-exclusive and shall not be pledged or sublicensed.
3. The customer is entitled to terminate their right of use at any time in writing. The supplier is not obliged to pay a refund or to pay any compensation due to the customer's termination.
4. Upon rescission of the contract or upon termination of the licence for use, the customer shall cease all use of the licensed software and delete all software and other materials provided by the supplier.
5. Only the registered actual user shall be entitled to use the software. The actual user shall be registered with the supplier by name and actual address. The supplier is entitled to request and receive sufficient evidence of the user's identity.
6. The customer is entitled to request a change of the registered user. An administrative fee shall become due for changing the registered user.
7. The supplier's obligation to make available and the customer's right of use extend only to the software's object code and the software's licence keys as provided by the supplier. The customer's right of use does not extend to the software's source code. The software's source code shall under no circumstances be made available to the customer.

Art. 16 User restrictions

1. The software shall only be used on one machine. In the event of any malfunction or change of equipment, the customer shall notify the supplier.
2. The customer shall only be able to use the software after having activated the software on its equipment via the activation server with the licence keys. A licence key shall function only and insofar as the customer

connects to the activation server every 30 (thirty) days. Connection to the activation server requires an internet connection.

3. The customer agrees that the software automatically checks customer's compliance with the licence terms by connecting to the activation server. The supplier is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the parties. The customer shall never remove or bypass technical measures intended to protect the software or have such technical measures removed or bypassed.

4. The customer may use the software only insofar as doing so as is necessary for the intended use.

5. The customer may never rent out, dispose of or grant limited rights to, or make available to third parties (any version of) the software and the carriers on which the software is or will be recorded. The customer may also not grant, whether or not remotely (online), a third-party access to the software or place the software with a third party for hosting, not even if the third party concerned only uses the software for the customer.

6. The customer may never reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the software.

7. If so requested, the customer shall cooperate without delay in an investigation into compliance with the agreed restrictions on use carried out by or for the supplier. Should the supplier so demand, the customer shall grant the supplier access to its system. Insofar as such information does not concern the use of the software itself, the supplier shall treat all information that it obtains from the customer in the context of an investigation as confidential.

8. The parties maintain that the contract concluded between the parties, insofar as the object of this contract is the making available of software for use, shall never be deemed to be a purchase contract.

Art. 17 Payment, delivery and acceptance

1. The customer shall pay the amount owed for the right of use before delivery.

2. The supplier shall make the software available to the customer online. At the supplier's discretion, any agreed user documentation shall be made available in digital form.

3. The customer shall accept the software in the state that it is in when delivered (as is, where is), therefore with all visible and invisible errors and defects. In the aforementioned case, the software shall be deemed to have been accepted by the customer upon delivery.

4. The supplier does not guarantee that the software is suitable for actual use and/or the intended use. The supplier also does not guarantee that the software will operate without interruption.

Art. 18 Changes in the software

1. Baring exceptions provided for by law, the customer may not change all or part of the software without the prior written permission of the supplier. The supplier is entitled to refuse or attach conditions to such permission. The customer shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with the supplier's permission.

Chapter 3. Provision of services, maintenance, new versions and support

Art. 19 Performance

1. The supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the customer. All services by the supplier shall be performed on the basis of an obligation to use best endeavours unless and insofar as the supplier has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract.

2. The supplier shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or licence keys unless the misuse is the direct result of deliberate intent or recklessness on the part of the supplier's management.

3. The supplier is not obliged to follow the customer's instructions in the performance of its services, particularly not if these instructions change or add to the content and scope of the agreed services. If such instructions are followed, however, payment shall be made for the work concerned in accordance with the supplier's usual rates.

Art. 20 Maintenance services

1. At the discretion of the supplier, the supplier shall perform maintenance work with respect to the software. The maintenance obligation includes fixing errors in the software. An error shall mean a substantial failure of the software to meet the functional or technical specifications of the software expressly made known to the supplier in writing.

2. The customer shall report errors discovered in the software in detail. Following receipt of the report, the supplier shall strive to the best of its ability to fix errors and/or implement improvements in later, new versions of the software in accordance with its usual procedures. Depending on the urgency and the supplier's version and release policy, the results shall be made available to the customer in a manner and within a term determined by the supplier. The supplier is entitled to install temporary solutions, program bypasses or problem avoiding limitations in the software. The customer shall itself install, organise, parameterise and tune the corrected software or the new version of the software made available, and, if necessary, modify the equipment and operating environment used.

3. The customer shall extend the cooperation required by the supplier in the context of maintenance, including temporarily ceasing use of the software.

4. The maintenance work performed by the supplier does not affect the customer's own responsibility for managing the software, including checking the settings and the way in which the results arising from operating the software are used. The customer shalt itself install, organise, parameterise and tune the software and support software required and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

Art. 21 New versions of software

1. New versions of the software shall be made available at the supplier's discretion and only if and insofar as this has been agreed upon.

2. The customer shall be entitled to a licence for use of new versions of the software, free of charge, up to one year from delivery of the software.

3. One year from the delivery of the software, the customer shall be entitled to a licence for use of new versions of the software only if and insofar this has been agreed upon and only if and insofar customer fulfilled its payment obligation for update services in accordance with supplier's rates.

4. The term of the update services shall be one (1) year.

5. If the customer elects not to renew the update services and later wishes to re-enrol in the update services, customer shall receive new versions of the software as became available up to one year from the day the update service stopped, or customer may become actual by paying (i) the amount of update fees that would have been paid for the period of time that customer had not enrolled in the update services, or (ii) a reinstatement fee to be determined by the supplier.

6. After a new version of the software has been made available, the supplier shall no longer fix errors in the previous versions, provide support and/or perform maintenance work with respect to previous versions.

7. The supplier may require that the customer enters into a further written contract with the supplier for a version with new functionality and that a further payment be made for this this version. The supplier may incorporate functionality from a previous version of the software in unaltered form, but does not guarantee that each new version includes the same functionality as the previous version. The supplier is not obliged to maintain, modify or add certain features or functionalities of the software specifically for the customer.

8. The supplier may require that the customer modifies its system (equipment, software and the like) if doing so is necessary for the proper functioning of a new version of the software.

Art. 22 Support services

1. At the discretion of the supplier may provide support to the customer. The supplier may provide, by email, advice on the use and functioning of the software specified in the contract. The support services shall only be available to the registered actual user of the software. The supplier shall handle properly substantiated requests for support within a reasonable term in accordance with its usual procedures. The supplier does not guarantee the accuracy, completeness or timeliness of replies or the support offered. Support services shall be performed on working days during the supplier's usual business hours.

2. The supplier may charge for the costs of support in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the customer, or as a result of causes that cannot be attributed to the supplier.