

ProSim FMS Trainer - Terms and Conditions

2022-03-01, version 1.00

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, the ProSim corporation named in the invoice or that has otherwise entered into the agreement under the applicability of these Terms and Conditions with the customer (the person or legal entity that has concluded an agreement with ProSim, subject to these Terms and Conditions, for the delivery of a licence to use and/or access to the software) or – if not mentioned therein – ProSim Aviation Research B.V., (hereinafter “supplier”) delivers goods and/or provides services of any nature whatsoever and under any name to the customer.
2. Under these Terms and Conditions supplier will provide customer with access to the software on the basis of software as a service (SaaS) (hereinafter: “Cloud Solution”), and/or a licence to use the software on their own computers (hereinafter: “Self-managed Solution”) and/or additional services such as maintenance, new versions and support.
3. These Terms and Conditions consist of several parts. The conditions from Chapter 1. “General provisions”, Chapter 2. “ProSim FMS Trainer Licence Type Matrix” and Chapter 5. “Provision of additional services, maintenance, new versions and support” apply in all events. The conditions of Chapter 3. “Self-managed Solution” apply if and insofar supplier makes the software available by the Self-managed Solution and Chapter 4. “Cloud Solution” in case of the provision of the Cloud Solution.
4. These Terms and Conditions shall also apply to the Self-managed Solution or the provision of the Cloud Solution during an evaluation (trial) period. Customer shall only be allowed to make use of an evaluation period after the express written permission of the supplier. For the duration of the evaluation the customer may use the Self-managed Solution or the Cloud Solution solely for evaluation purposes. The evaluation will terminate at the end of the evaluation (trial) period.
5. The applicability of any customer’s purchasing or other conditions is specifically excluded.
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. 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.
7. Supplier may make amendments to these Terms and Conditions. In case of an amendment, supplier will give customer at least 30 days’ notice thereof. An amendment will be considered to be accepted by customer and will enter into force on the date determined by supplier, if customer does not reject the amendment within 30 days following the notification thereof. If customer rejects the amendment, supplier will be entitled to terminate the contract by giving at least 30 days’ notice of termination with effect from the end of a calendar month. In that case supplier shall refund all amounts prepaid by client and are no longer due.

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Art. 2 Offers

1. All offers and other communications of the supplier are subject to confirmation unless the supplier has indicated otherwise in writing.

Art. 3 Price and payment

2. The prices for the Self-managed Solution, Cloud Solution and the additional services delivered by supplier are determined on their website.
3. All prices are exclusive of value added tax (sales tax) and other levies imposed by the government, unless otherwise specified. All prices stated by the supplier are in euros (EUR) and the customer shall make all payments in euros.
4. Amounts owed must be paid by customer in accordance with the agreed payment terms or the payment terms stated on the invoice. Customer may not suspend any payment and may also not set off any amounts owed.
5. If, according to the contract concluded between the parties, 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 towards the supplier for performance of the contract.
6. 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.
7. The prices agreed between supplier and customer can be adjusted by supplier from the moment the contract is tacitly extended.
8. 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, the supplier 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 the supplier's other legal and contractual rights.
9. If the customer should fail to pay the sums due, does not pay on time, or is otherwise acting contrarily to the Agreement, supplier is entitled to suspend customer's access to the software.

Art. 4 Term of the contract

1. The contract between supplier and customer shall be entered into for the term agreed to, from the date of conclusion of the contract.
2. The term of the contract shall be tacitly extended, each time by the period of time originally agreed on unless the customer or supplier terminate the contract in writing with due observance of a notice period of one (1) month prior to the end of the current term.
3. Customer is not entitled to terminate (for convenience) the contract that has been entered into for a definite period of time before the end of the term.
4. Customer agrees to the immediate delivery of the Self-managed Solution and/or Cloud Solution and therefore waives the right of withdrawal. As a consumer, you may have additional cancellation and refund rights under applicable local law; nothing in these terms and conditions limits any such rights under local law.

Art. 5 Confidentiality

1. The customer and supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to the supplier if and insofar as the supplier is required to provide the information concerned to a third party in

accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by the supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

2. The customer acknowledges that the software originating from the supplier is confidential in nature and needs to be handled confidentially.
3. The customer acknowledges that all custom-made agreements, such as price arrangements, are confidential in nature, and need to be handled confidentially.
4. During the term of the contract and for one year following its termination, the customer shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of the supplier who are or were involved in the performance of the contract unless the supplier has given prior written permission. Conditions may be attached to this permission, including the condition that the customer must pay reasonable compensation to the supplier. This article 5.4. does not apply to customers that can be qualified as consumers.

Art. 6 Privacy, data processing 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 Licence and/or Service.
2. The customer is fully responsible for the data that it processes in the context of using a good delivered, or service performed, by the supplier. The customer guarantees vis-à-vis the supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The customer indemnifies the supplier against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.
3. If and when applicable parties shall process personal data in accordance with the General Data Protection Regulation if the General Data Protection Regulation is applicable. In that case parties hereby acknowledge that supplier is a data processor and client is a data controller.
4. Supplier applies a Privacy Policy, which can be consulted on its website: <https://prosim-ar.com/privacy-policy/>. Upon the creation of a contract between parties, customer declares himself to be in agreement with the content of ProSim's Privacy Policy.
5. 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, and may only be made known to authorised personnel in the customer's own organisation.
6. The customer is at all times responsible to adequately secure its systems and infrastructure and to have adequate active antivirus software protection at all times.
7. The customer shall be liable for any loss arising from failure to comply with this article.

Art. 7 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. 8 Risk transfer

1. The risk of loss, theft, misappropriation or damage of items, information including licence keys, access-codes, documents or software supplied or used in the context of performing the contract shall pass to the customer

at the time at which the customer or an auxiliary person of the customer comes into actual possession of the items and information referred to.

Art. 9 Intellectual property

1. All intellectual property rights to the software, websites, data files, testing and examination materials, as well as other materials like reports and offers, developed or 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 the software and information made available to the customer for the purpose of limitation of the use by customer 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, 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 indemnify 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, or
 - (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. 10 Cooperation and information

1. The customer guarantees that the information that it has provided or that has been provided on its behalf to the supplier and on which the supplier has based its offer is accurate and complete.
2. The customer shall notify itself of all the system requirements provided by supplier before purchase of the Cloud Solution and/or Self-managed Solution.
3. The customer is responsible for the management, including checking the settings, and use of the Cloud Solution and/or Self-managed Solution provided by the supplier, and the way in which the results are used. The customer is also responsible for appropriately instructing users and for the use made by users.
4. The customer shall itself and under its own responsibility install, organise, parameterise and tune the software 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.

Art. 11 Termination and rescission

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. 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.
3. 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. With due regard to the stipulation of the preceding sentence, amounts invoiced by the supplier prior to rescission in connection with what it already properly performed or delivered in the performance of the contract shall remain payable in full and shall become immediately due and payable at the time of termination.
4. Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. The supplier may also terminate the contract, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the customer's company. The supplier is never obliged to repay any amount in money already received or pay any amount in compensation due to rescission or termination as referred to in this paragraph. If the customer goes irrevocably bankrupt, its right to use the software and other materials made available to it shall end, as shall its right to access and/or use the supplier's services, without termination by the supplier being required.

Art. 12 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 15.000 (fifteen thousand 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 due to business interruption, loss as a result of claims of the customer's customers 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 between the parties, is excluded.

5. The exclusions and limitations of the supplier's liability described paragraph 1 up to and including paragraph 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 paragraph 1 up to and including paragraph 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 the 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.
9. The customer indemnifies the supplier against any and all claims of third parties due to product liability as a result of a defect in a product or system that the customer offers to a third party and that consisted in part of the software or other materials supplied by the supplier, unless and insofar the customer is able to prove that the loss was caused by the software or other materials referred to.

Art. 13 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 of third parties 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. 14 Changes and additional work

1. If, at the request or prior consent of the customer, the supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with the supplier's usual rates.

Art. 15 Miscellaneous

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.
3. If and insofar customer is a consumer and any provisions of these terms should be null and void as a result of mandatory law applicable to the customer, the other provisions of these terms remain fully applicable and effective.

Art. 16 Applicable law and disputes

1. This agreement and any further agreement between the supplier 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 supplier and customer shall be resolved by the Court of Rotterdam (The Netherlands).
3. If and insofar customer is a consumer, customer also enjoys the protection of the mandatory provisions of the law of customer's usual place of residence.

Chapter 2. ProSim FMS Trainer Licence Type Matrix

Licence	Type of usage right	Description
Personal	Named user	Customer is a single designated individual, for both private or commercial use. Usage is limited to four hours per day.
Classroom	Seat	Customer is an educational and/or commercial organisation. Unlimited number of users and usage time.

The ProSim FMS Trainers are available for both Self-managed local software installation (hereinafter: Self-managed Solution) and as web browser-based Software as a Service (SaaS), (hereinafter: Cloud Solution) for which the terms are set out in Chapter 3 respectively Chapter 4 below.

Chapter 3. The Self-managed Solution

Art. 17 User rights

1. The supplier shall make the software available to the customer for the duration of the contract on the basis of a Self-managed Solution for use.
2. The right of use of the software is determined by the Licence granted, as specified in the ProSim FMS Trainer Licence Matrix in Chapter 2.
3. The Self-managed Solution renders the customer a right to use the software provided for the duration of the contract. The right to use the software is non-exclusive and shall not be pledged or sublicensed.
4. Upon rescission or termination of the contract or upon termination of the Self-managed Solution the customer shall cease all use of the licenced software and delete all software and other materials provided by the supplier.
5. Only the registered user shall be entitled to use the software. The actual user shall be registered with the supplier by its registered (company) name and actual address. The supplier is entitled to request customer to receive sufficient evidence of the registered 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 and technical documentation prepared during the development of the software shall under no circumstances be made available to the customer.

Art. 18 User restrictions

1. 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, 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.
2. The software shall only be used on one machine. In the event of any malfunction or change of the machine, the customer shall notify the supplier timely in advance.
3. The customer shall only be able to use the software after having activated the software on its machine 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.
4. The customer agrees that the software automatically checks customer's compliance with the Self-managed Solution 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.
5. The customer may only use the software for itself or in and for its own company or organization, and only insofar as doing so as is necessary for the intended use. The customer shall not use the software for third parties, for example in the context of Software as a Service (SaaS) or outsourcing.
6. The customer may never sell, 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.
7. The customer may never reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the software.
8. 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 buildings and systems. Insofar as such information does not concern the use of the software itself, the supplier shall treat all confidential business information that it obtains from the customer or at the customer's business location in the context of an investigation as confidential.
9. The parties acknowledge 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. 19 Payment, delivery and installation

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 as a download. 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. 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. 20 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 between the parties.
2. The customer shall be entitled to a licence for use of new versions of the software, free of charge, during the term of the contract.
3. After a new version of the software has been made available, the supplier shall no longer fix errors in the previous version and/or provide support and/or perform maintenance work with respect to previous versions.
4. 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 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.
5. 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. 21 Changes in the software

1. Barring 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 4. The Cloud Solution

Art. 22 Provision of the Cloud Solution

1. The Cloud Solution will remotely made available to the customer through the internet and includes hosting. The Cloud Solution will be provided to the customer for the duration of the contract.
2. The provision of the Cloud Solution is determined by the Licence granted, as specified in the ProSim FMS Trainer Licence Matrix in Chapter 2.
3. The provision of the Cloud Solution shall commence within a reasonable term following the conclusion of the contract. The customer shall pay the amount owed for the use of the Cloud Solution in advance.
4. The supplier may continue to provide the Cloud Solution using a new or modified version of the Cloud Solution. The supplier is not obliged to maintain, modify or add certain features or functionalities to the Cloud Solution specifically for the customer.
5. The supplier may temporarily put all or part of the Cloud Solution out of operation for preventive, corrective or adaptive maintenance or other forms of service. The supplier shall not allow the period during which the Cloud Solution is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.

6. The customer may access the Cloud Solution through the “Supported Web Browsers”. The Supported Web Browsers shall mean the latest two (major) releases of Microsoft Internet Explorer, Mozilla Firefox, Google Chrome and Apple Safari at the time a new version of the Service is released.
7. The supplier is never obliged to provide a physical carrier to the customer that contains the Cloud Solution provided to and held by the customer in the context of the Cloud Solution.
8. The supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the customer.
9. The customer is entitled to request a change of the registered user. An administrative fee is due for changing the registered user.
10. Upon rescission or termination of the contract or upon termination of the Cloud Solution the customer shall cease all use of the Cloud Solution.
11. The customer is responsible for the management, including checking the settings and use of the Cloud Solution. The customer is also responsible for appropriately instructing users and for the use made by users.

Art. 23 Restrictions of the Cloud Solution

1. 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, 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.
2. Only the registered user shall be entitled to make use of the Cloud Solution.
3. The customer may only use the Cloud Solution for itself or in and for its own company or organization, and only insofar as doing so as is necessary for the intended use. The customer may not allow third parties to make use of the Cloud Solution, unless these third parties are subcontractors or customers of the customer.

Art. 24 Guarantees

1. The Supplier does not guarantee that the Cloud Solution and other materials made available and held in the context of the Cloud Solution is free of errors and functions without interruption. The customer accepts the Cloud Solution in the state that it is in when delivered (as is, where is). The supplier shall make efforts to fix errors within a reasonable term if and insofar as the matter concerns software developed by supplier and the customer has provided a detailed, written description of the defects concerned to the supplier.
2. Where there are grounds for doing so, the supplier may postpone the fixing of defects until a new version of the Cloud Solution is put into operation. The supplier is entitled to install temporary solutions, program bypasses or problem avoiding limitations in the Cloud Solution. If specific software was developed on the instructions of the customer, the supplier may charge for the costs of fixing to the customer in accordance with the supplier's usual rates.
3. Based on the information provided by the supplier concerning measures to prevent and limit the effects of malfunctions, defects in the Cloud Solution, corruption or loss of data or other incidents, the customer shall identify and list the risks to its organization or itself and take additional measures if necessary. The supplier declares that it is prepared to provide assistance, at the customer's request, to the extent reasonable and according to the financial and other conditions set by the supplier, with respect to further measures to be taken by the customer. The supplier is never obliged to recover data that has been corrupted or lost.
4. The supplier does not guarantee that the Cloud Solution is suitable for actual use and/or intended use.

Art. 25 Security

1. Security features provided meet a level that is not unreasonable in view of the state of the art, the implementation costs, the nature, scope and context as known to the supplier of the information to be secured, the purposes and the standard use of supplier's Cloud Solution and the probability and seriousness of foreseeable risks.
2. The access or identification codes provided by or on behalf of the supplier to the customer are confidential and must be treated as such by the customer, and they may only be made known to customer itself and authorised staff in customer's own organisation or company. The supplier is entitled to change the access or identification codes. Customer is responsible for managing these authorisations and for providing and duly revoking access and identification codes.
3. In the event security features or the testing of security features pertain to software or infrastructure that has not been delivered by supplier to customer, customer guarantees that all licences or approvals have been obtained so that the performance of such activities is actually allowed. Supplier is not liable for any damage caused by or in relation to the performance of these activities. Customer indemnifies supplier against any claims, for whatever reason, arising from these activities being performed.
4. The supplier is entitled to adapt the security measures from time to time if this should be required as a result of a change in circumstances. The customer adequately secures its systems and infrastructure and keeps these adequately secured.
5. The supplier may give the customer instructions about security features intended to prevent or to minimize incidents, or the consequences of incidents, that may affect security. If customer should fail or follow the instructions issued by Supplier or by a relevant public authority, or should fail to follow these in time, the supplier is not liable and customer indemnifies supplier against any damage that may arise as a result.
6. The supplier is at any time permitted to install technical and organizational facilities to protect data files, websites, software made available, software or other works to which the customer has been granted access, whether directly or indirectly, also in connection with a restriction agreed on in the content or the duration of the right to use these objects. Customer may not remove or circumvent any of such technical facilities or have these removed or circumvented.

Chapter 5. Provision of additional services, maintenance, new versions and support

Art. 26 Performance

1. The supplier shall perform its services with care and 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. 27 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 shall 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. 28 Support services

1. At the discretion of the supplier, 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 contact person of the registered 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.