

# General Terms and Conditions of Sale of PROSIM

(November 2023)

## 1. Definitions

The terms when used in CAPITALS shall have the respective meanings set forth in these definitions or in the text.

**AGREEMENT:** means the set constituted by the present T&Cs together with the SPECIFIC CONDITIONS which prevails over the present T&Cs.

**CLASSIC SALE:** means any commercial transaction of PROSIM products or services that is not an ONLINE SALE. It usually consists in the issuance of a PROPOSAL by PROSIM followed by a purchase order from the CLIENT, the signature of the SPECIFIC CONDITIONS by both PARTIES, invoicing, delivery and corresponding payments.

**CLIENT:** means any natural or legal person which buys or uses products or services sold by PROSIM for its own purposes and subscribes to the present T&Cs.

**CREDENTIALS:** means the login and password specific to each TECHNICAL CONTACT, allowing the latter to access the MUTS SERVICES and in particular the "support" area of the PROSIM website.

**DATA:** means all the information provided by the CLIENT in the context of the use of the SOFTWARE or on the PROSIM website as well as all the information of which the CLIENT has the intellectual property and which would be provided by the CLIENT to PROSIM within the framework of the performance of any service, without this DATA being in the public domain.

**DOCUMENTATION:** means the description of the SOFTWARE's technical features as well as its instruction manual (user-guide) usually provided in electronic format.

**END-USER:** means the CLIENT if the latter is a natural person or, if the CLIENT is a legal person, the members of its staff or potential subcontractors operating on its SITE and duly authorized by the latter to use the SOFTWARE.

**HARDWARE:** means the computer hardware on which the CLIENT installs the SOFTWARE.

**MUTS SERVICES:** means the Maintenance, Update, Training and Support Services the scope of which is specified below in section 5.

**ON-DEMAND SERVICE:** means any provision of study, consulting, program development, training, engineering services, software implementation, measurement, research and development, bibliographic analysis, etc. which is not included in the MUTS SERVICES.

**ONLINE SALE:** means a commercial transaction of PROSIM products or services that is done remotely on the commercial PROSIM website accessible from [www.prosim.net](http://www.prosim.net) through various media (computers, smartphones, tablets). The payment by the CLIENT being also done online.

**PARTY:** means either PROSIM or the CLIENT, referred to collectively as the PARTIES.

**PROPOSAL:** means a technical and commercial offer that is made by PROSIM and sent to the CLIENT and that may relate to the licenses of a SOFTWARE and/or MUTS SERVICES associated with a SOFTWARE, and/or on an ON-DEMAND SERVICE.

**PROSIM:** means the company Fives ProSim SAS incorporated under French law [share capital of 147,800 Euros, whose Registered Office is located at 51, rue Ampère, Immeuble Stratège A, F-31670 LABEGE, France, registered with the company and trade registry of Toulouse under number 350 476 487, whose VAT number is FR 10 350 476 487 and whose corporate website address is [www.prosim.net](http://www.prosim.net)] and any

subsidiary company in which Fives ProSim SAS directly or indirectly holds more than 50% of the capital or more than 50% of the voting rights.

**PROTECTION DEVICE:** means a software key supplied by PROSIM, which enables the operation of the SOFTWARE on the HARDWARE, and controls the number of copies, the duration of the licenses and illegal uses of the SOFTWARE.

**SCHEDULED TRAINING COURSES:** training sessions bringing together employees from different companies, that PROSIM organizes during the year on most of PROSIM's software, face-to-face or remotely (upcoming schedule, as well as the teaching content, are available at [www.prosim.net](http://www.prosim.net)).

**SITE:** means a site of the CLIENT (plant, research center...) in the geographical sense of the term where is installed and/or used the SOFTWARE. A SITE corresponds to a postal address.

**SOFTWARE:** means all software (including any database that may be integrated) that appear in the SPECIFIC CONDITIONS, whose characteristics are specified on the PROSIM website and in the PROPOSAL in the context of a CLASSIC SALE.

**SPECIFIC CONDITIONS:** means a document which specifies the particular conditions of a transaction and which prevails over the present T&Cs:

- in the context of an ONLINE SALE: the "Summary of your order" which specifies the details of the products and services ordered (software, type and number of licenses, effective date, duration...) chosen by the CLIENT on the PROSIM website;
- in the context of a CLASSIC SALE: a document signed by authorized representatives of the two PARTIES (for example an ON-DEMAND SERVICE PROPOSAL accepted by the CLIENT, specific conditions of a SUBSCRIPTION, specific conditions for academic use...) which specifies in particular the details of the products and services ordered (software, type and number of licenses, date of entry into force, duration, price, restrictions on use, specific obligations, etc.).

**SUBSCRIPTION:** means the simultaneous provision, during a defined term of a license to use the SOFTWARE and the provision of associated MUTS SERVICES.

**T&Cs:** means the present General Terms and Conditions of Sale of PROSIM.

**TECHNICAL CONTACT:** means one person appointed by the CLIENT who is the technical contact of PROSIM, for use of the SOFTWARE for a given SITE. Unless otherwise agreed, there is a single TECHNICAL CONTACT per SITE.

## 2. Recitals

These T&Cs apply as long as different conditions have not been expressly agreed in writing between the PARTIES. These T&Cs, as well as the SPECIFIC CONDITIONS, take precedence over the general conditions of purchase of the CLIENT.

The CLIENT declares having read and accepted the T&Cs prior to the placing of his order. In the case of an ONLINE SALE, the validation of the order is therefore acceptance of the T&Cs by the CLIENT.

The T&Cs can also be validated at the time of installation of the SOFTWARE by the CLIENT on the HARDWARE. The sole fact for the CLIENT to install or use the SOFTWARE implies the unconditional acceptance of these T&Cs which the CLIENT acknowledges having read prior to any installation or use.

PROSIM reserves the right to modify its T&Cs at any time. The version of the T&Cs applicable to a sale is the one that is online on the PROSIM website at the time of the sale (ONLINE SALE or

CLASSIC SALE). The version of the T&Cs applicable is mentioned in the SPECIFIC CONDITIONS.

### 3. Purpose

The purpose of these T&Cs is to govern the general conditions in which:

- PROSIM grants the CLIENT a license to use a SOFTWARE (see section 4),
- and/or PROSIM provides the CLIENT with MUTS SERVICES associated with a SOFTWARE (see section 5),
- and/or PROSIM provides the CLIENT with an ON-DEMAND SERVICE (see section 6),

the specific terms and conditions are specified in the SPECIFIC CONDITIONS.

### 4. SOFTWARE license

When PROSIM grants to the CLIENT a license of a SOFTWARE, this license is a right of use of the SOFTWARE by the END-USERS, on the HARDWARE and the SITE(S) defined in the AGREEMENT, and for the duration envisaged in the AGREEMENT.

This right of use is granted in a personal basis and without exclusivity.

Unless otherwise stated, the SOFTWARE is provided by PROSIM in object code form.

By accepting the grant, the CLIENT agrees not to undertake any of the following without the prior written consent of PROSIM:

- any type of use not explicitly authorized by the AGREEMENT;
- to make any copy of all or part of the SOFTWARE for purposes other than the only backup (a partial copy of any database that may be integrated into the SOFTWARE is definitely prohibited);
- any grant, sub-license or agreement, whatever its qualification, which would transmit to a third party the use granted, even if this is free of charge;
- to disclose all or part of the features of the SOFTWARE for any purpose whatsoever, in particular for the purpose of realizing or having realized software having the same purpose;
- to attempt to circumvent the functions of the PROTECTION DEVICE;
- to reverse compile, reverse engineer or disassemble the object code form of the SOFTWARE.

PROSIM shall provide the CLIENT with the following elements required for using the SOFTWARE on the HARDWARE:

- the standard version of those programs constituting the SOFTWARE;
- the PROTECTION DEVICE required to use the SOFTWARE;
- technical support for SOFTWARE installation;
- all publicly available DOCUMENTATION relative to the SOFTWARE.

The following license types are available:

- "Local" license (or standalone): this license allows usage of the software on one computer. The user may easily transfer the license (temporarily or definitely) to another computer by following a simple procedure. Remote use of this type of license through an application server is not allowed.
- "Network" (or client/server) license: this license can be shared by several users connected to the same network (LAN: Local Area Network or WAN: Wide Area Network provided for a specified number of sites). The software is installed on an unlimited number of computers. The license is installed on the server and allows the simultaneous access of a given number of users.
- The network license can be "borrowable". The borrowing function (easy to use), creates a license for a specific user, on a specific computer, for a given duration. This allows the software to be used without being connected to the server, on a portable PC i.e. during a business trip. Borrowing one license reduces the number of possible simultaneous

accesses on the network license by one unit.

In the event of disappearance (theft, involuntary destruction) of the PROTECTION DEVICE, PROSIM will in no case be required to provide this element again free of charge to the CLIENT, regardless of the reason for the disappearance. It is the CLIENT's responsibility to take all measures to this effect. However this provision will not apply if it is proved that the loss of the PROTECTION DEVICE is due to its failure.

### 5. MUTS SERVICES

MUTS SERVICES are insured for the duration set forth in the AGREEMENT.

The Maintenance, Update, Training and Support Services (MUTS SERVICES) include:

- Maintenance: correction of all errors discovered and reported by the CLIENT that materially affect the performance, functionality, or other significant features of the SOFTWARE or the PROTECTION DEVICE;
- Update: PROSIM will provide software updates, fixes and/or patches, together with release notes and installation instructions when they are made available by PROSIM. Updates may include new developments, corrections, improvements in programs efficiency and reliability, and new DOCUMENTATION but may in PROSIM's discretion exclude major new functional capabilities;
- Training: any END-USER can freely attend (within available seats for each session) SCHEDULED TRAINING COURSES (excluding level 2 "advanced" training sessions), if these relate to the SOFTWARE covered by the AGREEMENT;
- Support (hot-line): off-site remote support in the form of consultations, help, defect correction, advice and assistance on the use and maintenance of the SOFTWARE. Typical technical support questions include:
  - installation of the SOFTWARE issues,
  - questions about how to correctly use the PROTECTION DEVICE,
  - technical information for using efficiently the SOFTWARE.

Questions involving process engineering, development of simulation models, search of missing data (properties of new compounds, binary interaction parameters...) and similar work may in PROSIM's discretion, be treated as beyond the scope of the hot-line service.

In addition, the "support" area of the PROSIM website is accessible to the TECHNICAL CONTACT(S) through their CREDENTIALS. This secure area makes available to the END-USERS a large number of very useful files, directly available or available for download, which contribute to an efficient use of the SOFTWARE. The latest software versions, user manuals, application examples, installation and license management guides, etc. are thus permanently available.

The MUTS SERVICES will not apply:

- in case of unauthorized modification made to the SOFTWARE by the CLIENT or by its subcontractor;
- in the event of an anomaly resulting from the use of the SOFTWARE or the PROTECTION DEVICE that does not comply with the specifications defined in the DOCUMENTATION;
- to codes developed by the CLIENT in the SOFTWARE environment or wrapping all or part of the SOFTWARE;
- to versions prior to the last version of the SOFTWARE made available to the CLIENT;
- in case of malfunction of the HARDWARE and/or its operating system and/or due to the CLIENT internal procedures;
- if the error cannot be reproduced by PROSIM on a computer equipment, which is not the CLIENT's one, properly functioning.

Furthermore, these MUTS SERVICES do not include specific developments of the SOFTWARE done on CLIENT request.

PROSIM is committed to answer only to requests from the TECHNICAL CONTACT(S) expressly designated (by default the person who placed the order).

MUTS SERVICES requests must be sent to PROSIM (e-mail and phone details indicated on the PROSIM website), specifying the CREDENTIALS that will have been given to the TECHNICAL CONTACT(S) on each request.

Technically qualified PROSIM experts (or its agents, representatives or local distributors) will be available by telephone at regular office hours and PROSIM will receive questions by e-mail twenty-four hours a day, seven days a week. Technical support is available in French and English. PROSIM, considering the information provided, will make every effort to respond quickly to the questions asked and to solve the difficulties encountered as soon as possible. PROSIM undertakes in particular to start the analysis and handling of the problem within a maximum of five working days after the CLIENT's written request.

To remedy the difficulties or bugs of the SOFTWARE, one or more PROSIM specialists will intervene by any means available (by phone, by e-mail, on the SITE of the system at the CLIENT, or "remotely" from a site electronically linked to the HARDWARE).

In the case of a "remote" support, PROSIM may be required to use software allowing it to view/edit/control the CLIENT's HARDWARE, after the CLIENT's agreement and installation by the CLIENT on his HARDWARE of the necessary software (download link being provided by PROSIM).

Only PROSIM (or its local agents, representative or distributors) will decide if provision of MUTS SERVICES requires visits to CLIENT's location.

In order to allow PROSIM to provide MUTS SERVICES with the required quality, the CLIENT undertakes:

- to notify in writing (mail, e-mail) to PROSIM any transfer of the SOFTWARE, occasional, temporary or permanent, whatever the cause, in particular on a SITE different from those designated in the AGREEMENT;
- to notify in writing (mail, e-mail) to PROSIM, any modification in the coordinates of the TECHNICAL CONTACT(S);
- to notify PROSIM in writing (mail, e-mail) of any request concerning difficulties or errors in the operation of the SOFTWARE, in particular when the intervention request has been made by phone. PROSIM will send the CLIENT a written response to any request notified in writing;
- to make available to PROSIM, if necessary, computing time, premises and HARDWARE elements for the proper performance of the maintenance service.

## 6. ON-DEMAND SERVICE

The purpose and the detail of the technical content of the ON-DEMAND SERVICE provided by PROSIM to the CLIENT are detailed in the PROPOSAL. The PROPOSAL also defines the schedule of the project, the information to be provided by the CLIENT, the deliverables, the organization of the project (project team, monitoring methods, place of execution, language, etc.) as well as the timeframe for the execution of each of the phases and financial conditions (amounts, invoicing schedule, payment terms, etc.). The PROPOSAL also indicates the interlocutors of each PARTY for the performance of the ON-DEMAND SERVICE.

The deadlines announced by PROSIM always mean after PROSIM has received the order and all the necessary information from the CLIENT. PROSIM will make every effort to respect the deadlines on which it is committed. However, in the event of delay, the CLIENT may only demand penalties for delay if there has been a written agreement to that effect between the PARTIES. In any event, penalties may in no case be required for a delay of less than fifteen days.

The deadlines specified in the PROPOSAL will be automatically extended:

- if information necessary for execution is not received in time by PROSIM;
- if the CLIENT does not respect his contractual obligations and in particular the payment terms.

PROSIM is only bound by an obligation of means. To ensure its commitments when providing an ON-DEMAND SERVICE, PROSIM undertakes to maintain the competence and know-how of its staff. PROSIM also undertakes to use all the means necessary for the success of its ON-DEMAND SERVICE.

PROSIM reserves the right to subcontract all or part of an ON-DEMAND SERVICE to any non-competing company of the CLIENT.

It is hereby expressly agreed that PROSIM may make further use of the know-how acquired during the performance of an ON-DEMAND SERVICE and perform similar services for other clients.

## 7. Prices

The prices are fixed before the entry into force of the AGREEMENT.

In the case of an ONLINE-SALE, the prices are indicated at the "CART" level in Euros (EUR- €) or in US Dollars (USD- \$) "excluding taxes". The amount of VAT is specified after the selection of the products by the CLIENT, depending on its geographic location. If the CLIENT is located in France, VAT is invoiced at the rate in force in France. The same applies if the CLIENT is located in the European Union, unless the CLIENT has been able to provide a valid Intra-Community VAT number in the appropriate input field. If this is the case, VAT is not invoiced. For other territories, purchases are made for the amount "excluding taxes".

In the case of a CLASSIC SALE or an ON-DEMAND SERVICE, the prices indicated in a PROPOSAL are understood to be "excluding taxes" and in particular excluding VAT. The CLIENT will have to pay the fees and taxes in force.

Any travel and subsistence costs of PROSIM staff, made at the request of the CLIENT as part of MUTS SERVICES or an ON-DEMAND SERVICE and not expressly included in the AGREEMENT, remain the responsibility of the CLIENT. These costs will be invoiced in addition, if necessary, on presentation of supporting documents by PROSIM.

PROSIM reserves the right to modify its prices at any time. However, the items ordered will be invoiced at the prices indicated in the SPECIFIC CONDITIONS or in a PROPOSAL, as long as it remains valid.

In the case of a SUBSCRIPTION for an agreed period, the fee is, unless otherwise agreed, updated at each due date on the basis of 2.5% per year.

The PARTIES have expressly agreed that in the event of imperfect execution of all or part of the MUTS SERVICES or of an ON-DEMAND SERVICE, the CLIENT may propose to PROSIM to accept this imperfect execution and request from PROSIM a proportional reduction in the price of the MUTS SERVICES or of an ON-DEMAND SERVICE concerned, by means of a registered letter with acknowledgment of receipt justifying precisely the revision of the price on the basis of quantifiable and objective criteria. PROSIM will have 15 days to accept this price reduction proposal and / or make a counterproposal to the CLIENT by registered mail with acknowledgment of receipt. If the PARTIES do not agree within 15 days of receipt by the CLIENT of PROSIM's counterproposal, the PARTIES will call on an amicable expert, specialist in the sector, who will have a period of 30 days from the written request from the PARTIES to carry out its mission and report, it being understood that the costs of this expertise will be shared equally between the PARTIES. In the absence of agreement by the PARTIES on the reduction in the price of the MUTS SERVICES or of an ON-DEMAND

SERVICE concerned after 15 days from the date of receipt of the expert report, the price offered in the latter will be enforceable.

## **8. Order, payment and delivery**

### **8.1. Case of an ONLINE SALE**

The CLIENT validates his order when he activates the link "Proceed to checkout" at the bottom of the page "Summary of your order". He then accepts the ordering process and acknowledges having read these T&Cs and giving its unconditional acceptance. Orders placed on any PROSIM website bind the CLIENT upon receipt of the order confirmation by email. The data recorded by PROSIM constitutes proof of the nature, content and date of the order. This is archived by PROSIM. The CLIENT can access this archive by contacting PROSIM.

Purchases are payable immediately, either directly online on the internet site by communication of the credit or debit card number (SSL secure mode), or by check payable to Fives ProSim SAS sent directly to PROSIM accompanied by the "Purchase Order" (this "Purchase Order" appears on the CLIENT screen when he has confirmed his order), either by bank transfer (bank details provided on request).

On receipt of payment (validation of payment by credit or debit card or cashing of check or bank transfer), PROSIM will send the CLIENT an email containing the elements of the order and providing a download link of the SOFTWARE as well as a code to activate the PROTECTION DEVICE for the duration corresponding to the AGREEMENT.

Delivery is made by simple file download. The downloaded version is a provisional version, the validity of which is limited in time by the PROTECTION DEVICE.

PROSIM will also transmit to the CLIENT, by e-mail, its CREDENTIALS.

In some cases, including default of payment, wrong address or other problem related to the information provided by the CLIENT and not allowing the order to be processed correctly, PROSIM reserves the right to block the CLIENT's order until the problem is resolved.

The products are delivered to the email address indicated by the CLIENT in his order, he must therefore ensure its accuracy. PROSIM will not be held responsible for a delay in delivery due to incorrect information provided by the CLIENT.

The SOFTWARE having been delivered to the CLIENT by downloading files, the CLIENT cannot return the product thus sold and the sale will then be considered as completed. PROSIM will therefore not issue any reimbursement.

### **8.2. Case of a CLASSIC SALE**

Upon receipt of a SUBSCRIPTION order, PROSIM will send the CLIENT an email confirming receipt of the order as soon as possible and providing the client with his CREDENTIALS, a download link for the full version of the SOFTWARE including a code for the PROTECTION DEVICE for a limited period of time.

PROSIM will also transmit to the CLIENT the SPECIFIC CONDITIONS for signature as well as the invoice for payment.

Upon receipt of payment and SPECIFIC CONDITIONS signed by the CLIENT, PROSIM will transmit to the CLIENT a code enabling the PROTECTION DEVICE to be activated for the duration corresponding to the period paid.

### **8.3. Common provisions (ONLINE SALE and CLASSIC SALE)**

Unless otherwise agreed, invoices issued by PROSIM must be paid by the CLIENT within thirty (30) days net as from the date of invoice.

In the event of late payment and without it being necessary to give the CLIENT formal notice to pay, PROSIM shall apply a late payment penalty equal to three (3) times the legal interest rate in France calculated per day of delay from the due date of the debt, until the date of effective payment. In accordance with French Decree No. 2012-1115 of October 2, 2012, a lump sum of € 40

compensating recovery costs shall also be automatically due in addition to the late payment penalty.

No discount for early payment is granted by PROSIM.

Unless otherwise provided, invoices issued by PROSIM are transmitted to the CLIENT by electronic means.

In the event of payment by bank check, this is remitted for cashing upon receipt. Payments made by the CLIENT will only be considered final after PROSIM has actually received the sums due by the CLIENT.

For any question relating to the follow-up of his order, the CLIENT can send an email to [sales@prosim.net](mailto:sales@prosim.net).

The delivery of the SOFTWARE (or any update) consists of:

- sending by PROSIM to the TECHNICAL CONTACT of a download link for the SOFTWARE or downloading on the initiative of the CLIENT by accessing the download area of the PROSIM website using their CREDENTIALS,
- the provision to the CLIENT of information relating to the SOFTWARE necessary for the installation of the SOFTWARE and the PROTECTION DEVICE on the HARDWARE,
- installation by the CLIENT's staff of the SOFTWARE and the PROTECTION DEVICE on the HARDWARE.

It is up to the CLIENT to deploy the SOFTWARE to make it accessible to END-USERS and to ensure the proper configuration of the HARDWARE and its operating system.

In the case of a SUBSCRIPTION for an agreed period, the fee for each period (year, month) is by default invoiced up-front of each period.

PROSIM will not be required to make available the license for the SOFTWARE ordered by the CLIENT if the latter does not pay the price under the conditions and according to the conditions provided for in the AGREEMENT.

If, in a previous transaction, the CLIENT has not complied one of his obligations (late payment, for example), a refusal of sale may be made against him.

The PARTIES expressly agreed and agreed to derogate from article 1220 of the French Civil Code. Also, the CLIENT cannot, in any case, suspend its obligations without proven breach of PROSIM. The CLIENT must notify PROSIM and justify any dispute of an invoice in writing before the due date of the said invoice and, by derogation from article 1223 of the French Civil Code, cannot in any way decide alone of any reduction of the sums appearing there.

## **9. Intellectual property**

The SOFTWARE, the work carried out and all the results produced within the framework of an ON-DEMAND SERVICE, the brands, the domain names, the distinctive signs and any content present on the PROSIM website, with the exception of DATA, are the exclusive property of PROSIM or result from a right of use granted personally to PROSIM.

Unless otherwise stated, these T&Cs do not give the CLIENT any property rights over the intellectual property elements set out above, with the exception of DATA which remains the property of the CLIENT. It is understood between the PARTIES that the SOFTWARE is part of PROSIM's trade secrets and confidential information, regardless of whether all or part of the SOFTWARE is, or may or may not be, patented or protected in any way.

The right to use the SOFTWARE granted to the CLIENT cannot be considered as an assignment of any intellectual property right to the CLIENT but constitutes a simple right to use the SOFTWARE and for the duration of the license specified in the AGREEMENT.

When the AGREEMENT includes the delivery by PROSIM of elements protected by copyright law, the CLIENT undertakes to

use them only for his personal use and not to assign or market them to third parties in the form copies or derivative products.

## 10. Counterfeiting

PROSIM hereby agrees to warranty the CLIENT, for the duration of their contractual relationship, against any action or claim brought by a third party against the CLIENT on the grounds that the SOFTWARE infringes pre-existing intellectual property rights in France.

In this context, and within the limit of liability referred to in article 12 below, PROSIM will cover any damages or compensation which the CLIENT has been sentenced to pay to a third party, pursuant to an enforceable and final court decision, on the ground of infringement attributable to the use of the SOFTWARE under the conditions set out in these T&Cs.

In the case of such a claim or action, PROSIM may at its sole discretion and at its expense:

- change all or part of the SOFTWARE to allow its use;
- obtain a right of use from a third party.

If none of the presented solutions is technically or financially reasonable, PROSIM may at its sole discretion terminate the right to use the SOFTWARE and refund to the CLIENT the fees paid for the licenses to use the SOFTWARE.

This warranty is subject to the following specific conditions:

- the CLIENT must have complied with all the provisions laid down in these T&Cs and all of the terms of use provided in the DOCUMENTATION;
- the CLIENT must have notified to PROSIM any claim, action for infringement or declaration preceding this action, by letter with acknowledgement of receipt sent to PROSIM within fifteen (15) days of receipt;
- the CLIENT must loyally collaborate with PROSIM to assist PROSIM in its defense, particularly by providing any elements and information available to it to carry out such defense;
- PROSIM will have the responsibility and control of the proceedings and, accordingly, PROSIM will control the amount of attorney's fees and other costs associated with the proceedings;
- the CLIENT hereby agrees that PROSIM may negotiate the possibility for the CLIENT to continue to use the SOFTWARE or the contested part of the SOFTWARE or proceed with its modification or replacement by a non-infringing item presenting at least equivalent features and operating mode.

PROSIM grants no warranty whatsoever if the SOFTWARE used by the CLIENT is not the latest version of the Software or in case of infringement attributable to the combination of the SOFTWARE with third party software.

## 11. Warranty

PROSIM does not warrant the suitability of the SOFTWARE nor the results of an ON-DEMAND SERVICE with all of the CLIENT's needs, nor its operation in any hardware or software environment, with the exception of the environments specified in the DOCUMENTATION.

To that end, the CLIENT hereby agrees that the PARTIES expressly waive under the terms of these T&Cs, the application of any legal provisions relating to any warranty for hidden defects of the SOFTWARE. PROSIM shall not be held liable for any other warranty regarding the rights of use granted by PROSIM.

## 12. Liability

PROSIM is only bound by an obligation of means. Any deadline to process the CLIENT's requests stipulated either in the SPECIFIC CONDITIONS or these T&Cs is indicative and cannot be used to seek PROSIM's liability.

In any event, PROSIM cannot be held liable towards the CLIENT of any:

- indirect damages sustained by the CLIENT, including loss of profit, loss of data (including the DATA), operating loss, loss of turnover, loss of clients, loss of goodwill, loss of business opportunities and/or loss of savings consecutive to the use of the results of an ON-DEMAND SERVICE nor to the use or the impossibility of using a SOFTWARE or its PROTECTION DEVICE;
- costs of replacement of software, services or technologies;
- misuse of the SOFTWARE or its PROTECTION DEVICE (non-compliance with the DOCUMENTATION, mishandling, fraudulent use, accidental destruction of the DATA by the CLIENT or a third party).

The SOFTWARE, its PROTECTION DEVICE and the results of an ON-DEMAND SERVICE are used under the sole liability of the CLIENT.

The CLIENT must make, under its own liability and on its own initiative, a backup of the DATA.

PROSIM shall have no liability for the implementation of computer security measures (antivirus, firewall...) necessary for the protection of the End-USERS' workstations and their potential consequences.

Under no circumstances shall PROSIM be held liable for the deficiency of the CLIENT in any updates of the SOFTWARE, the HARDWARE and/or updates of its operating system.

In any event, PROSIM's obligation to indemnify potential losses or damages shall in no circumstances exceed the amount of the sums actually paid by the CLIENT pursuant to the AGREEMENT. This limitation of liability is an integral part of the agreement between PROSIM and the CLIENT and has been an essential condition in determining the price.

## 13. Confidentiality

Each PARTY (the "RECEIVING PARTY") agrees to treat and maintain for the other PARTY (the "DISCLOSING PARTY") as the DISCLOSING PARTY's confidential property and not to use or disclose to others during or subsequent to the performance of an AGREEMENT any information (including any technical information, experience or data) regarding such other PARTY's plans, designs, programs, software, technology, plants, processes, products, costs, equipment, operations or customers (including any similar information of other parties that such other party has received or may receive from other parties) that may come within the knowledge of or be developed by a PARTY for the DISCLOSING PARTY in the performance of the AGREEMENT.

The provisions of this section shall not apply to information that:

- has been published and has become a part of the public domain other than by the acts or omissions of the RECEIVING PARTY, its employees, agents or contractors;
- has been lawfully furnished or made known to the RECEIVING PARTY by third parties (other than those acting directly or indirectly for or on behalf of the DISCLOSING PARTY) without restriction on the party as to its disclosure or use; or was in the RECEIVING PARTY's possession as of the effective date of this AGREEMENT;
- was independently developed by the RECEIVING PARTY without reference or access to the CONFIDENTIAL INFORMATION of the DISCLOSING PARTY;
- is disclosed pursuant to a subpoena or other valid legal order of a governmental body, provided that the RECEIVING PARTY shall provide prompt written notice of such subpoena or order and reasonable assistance to the DISCLOSING PARTY in seeking a protective or other similar order, and such disclosure is limited to the extent required by law.

For the purpose of interpreting this section, no CONFIDENTIAL INFORMATION shall be deemed to be within the scope of the

foregoing exclusions merely because such CONFIDENTIAL INFORMATION is embraced by more general information which falls within the scope of such exclusions.

Unless otherwise agreed, the above obligations will remain in force for the duration of the AGREEMENT, and for five (5) years from its termination.

#### **14. Conditions of intervention on a site of the other PARTY**

For any intervention in CLIENT's premises, PROSIM agents or its representatives stay under PROSIM responsibility and stay distinct from the staff of the CLIENT. They will respect working hours and internal rules defined for CLIENT staff. Reciprocally, for all visit to PROSIM offices, CLIENT staff will remain under CLIENT responsibility and stay distinct from PROSIM staff. CLIENT agents will respect working hours and internal rules applying to PROSIM offices. Each PARTY undertakes to take any measures required to warrant, to prevent and to insure the people and material of the other PARTY against any damage they could cause, even by accident, during these interventions.

#### **15. Protection of personal data**

Pursuant to law 78-17 of January 6, 1978, it is recalled that the personal data which are requested from the CLIENT are necessary for the processing of his purchase order and the preparation of invoices, in particular.

The CLIENT has, in accordance with French and European regulations in force, a right of permanent access, modification, rectification and opposition with regard to information concerning him. To exercise this right, simply contact PROSIM at the contact details specified at the bottom of the page. PROSIM's data protection policy is available on the PROSIM website ([www.prosim.net/en/prosim-data-protection-policy/](http://www.prosim.net/en/prosim-data-protection-policy/)).

The PROSIM website implements organizational, technical, software and physical measures in terms of digital security to protect personal data against alteration, destruction and unauthorized access. However, it should be noted that the internet is not a completely secure environment and the website cannot fully guarantee the security of the transmission or storage of information on the internet.

#### **16. Presentation of products**

The characteristics of the products offered for sale are briefly presented on the PROSIM website as well as on its sales brochures. PROSIM cannot be held liable if errors are introduced. The photographs and graphics presented do not enter into the contractual field. Likewise PROSIM cannot be held responsible for typographical errors. PROSIM makes every effort to ensure the veracity of the elements presented from its partners. However, being dependent on the information transmitted by them, PROSIM cannot guarantee or be held responsible for the inaccuracy of this information.

The CLIENT hereby declares it has read and understood the technical characteristics and requirements of the SOFTWARE, prior to its acquisition from PROSIM of the licenses to use the SOFTWARE.

#### **17. SUBSCRIPTION term**

A SUBSCRIPTION is initially concluded for an INITIAL PERIOD expressed in number of years or months from its EFFECTIVE DATE. It cannot be terminated unilaterally by the CLIENT during this INITIAL PERIOD except in the event of non-compliance by PROSIM with its obligations.

This INITIAL PERIOD can then be automatically renewed by TACIT RENEWAL. In this case, the SUBSCRIPTION will be renewed from year to year (respectively from month to month) by tacit agreement, unless terminated by one or the other PARTY, within

the agreed PERIOD OF NOTICE before the renewal date, by registered letter with acknowledgment of receipt.

If a TACIT RENEWAL is not set forth in the SPECIFIC CONDITIONS, the SUBSCRIPTION will automatically terminate at the end of the INITIAL PERIOD. If the CLIENT wishes to continue using the SOFTWARE and benefit from PROSIM MUTS SERVICES, PROSIM will establish a new proposal, and in the event of agreement a new contract.

The INITIAL PERIOD, the EFFECTIVE DATE, the TACIT RENEWAL or not, and if necessary, the PERIOD OF NOTICE are specified in the SPECIFIC CONDITIONS.

#### **18. Period of validity of PROPOSALS**

Any offer made by PROSIM is only valid for a period specified in the PROPOSAL, by default 30 days. Beyond this deadline PROSIM will no longer be required to comply with the various provisions of the PROPOSAL and will in particular be free to reassess the price in the event of a new consultation.

As part of an ONLINE SALE, the products are offered for sale as long as it is possible to add them to the "CART".

#### **19. Non-Solicitation**

The CLIENT agrees not to hire, nor to make work in any way, any present or future employee of PROSIM. The present clause will be valid even in the event that the solicitation is on the initiative of the said employee. This clause will have effect during the entire execution of an AGREEMENT between PROSIM and the CLIENT, and for three (3) years from its termination.

#### **20. Retention of title**

Until the fulfillment of all of the CLIENT's obligations, and in particular full payment of the agreed price (principal and interest), software, information, services, study reports and files remain the property of PROSIM. In the absence of payment of the price by the agreed deadline, PROSIM may take back the elements supplied to the CLIENT, the sale will be automatically canceled if it appears to PROSIM and the deposits already paid will remain with PROSIM.

#### **21. Commercial reference**

It is expressly agreed between the PARTIES that PROSIM may state (without revealing its content) the existence of an AGREEMENT with the CLIENT, and in particular cite the CLIENT as one of its commercial references. PROSIM may use the CLIENT's trade name and its logo for this purpose on any medium.

Conversely, the CLIENT may freely cite PROSIM as being one of its suppliers.

#### **22. Termination of contractual relations**

In the event of termination or expiration of a license granted under an AGREEMENT, the CLIENT shall immediately stop using the SOFTWARE. All payments made by the CLIENT by the date of termination will remain with PROSIM. The CLIENT will pay all unpaid invoices issued up to the effective date of termination.

The CLIENT shall immediately provide PROSIM with the copy or copies of the SOFTWARE, DOCUMENTATION, and any backup copy in its possession, along with a certificate proving the uninstallation of the SOFTWARE.

PROSIM will deactivate the CREDENTIALS created for the CLIENT, thus no longer allowing access to the "support" area of the PROSIM website.

The CLIENT expressly refrains from making or keeping a copy, in whole or in part, under penalty of prosecution for counterfeiting.

At the expiration of the contractual relationship, whatever the cause, the DATA transmitted by the CLIENT to PROSIM within the framework of the contractual relations will be returned or destroyed, according to the instructions of the CLIENT (with the exception of administrative data).

### **23. Force majeure**

The occurrence of force majeure has the effect of suspending the execution of PROSIM's contractual obligations. A case of force majeure is any event independent of the will of PROSIM and obstructing its normal functioning such as in particular natural disorders, decisions of administrative or military authorities, insurrections, social conflicts, strikes, accidents, shortage of workforce, transportation, communications or telecommunications. If the event constituting force majeure extends beyond a period of three (3) months, the CLIENT may cancel orders placed and not yet delivered without being asked for a penalty. In no case will this provision exempt the CLIENT from its obligation to pay for the products or services provided.

### **24. Governing law and settlement of disputes**

The provisions of these T&Cs, as well as the relations between PROSIM and its CLIENT, within the framework of the AGREEMENT are subject to French law.

All disputes that may arise from the execution of the object of the AGREEMENT by PROSIM for its CLIENT are subject to amicable conciliation, in the interest of both PARTIES. In the event of persistent disagreement, all disputes to which the provisions of the AGREEMENT could give rise, concerning their validity, their interpretation, their execution, their termination and their consequences will be submitted to the courts of the jurisdiction of the Court of Appeal of Toulouse (France 31).

### **25. Miscellaneous provisions**

- Headings used in these T&Cs are for the purpose of reference only and are not to be considered in construction or interpretation of these T&Cs.
- In case any one or more of the provisions contained in these T&Cs shall for any reason be held to be invalid, illegal or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under these T&Cs, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and these T&Cs shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein.
- The fact that PROSIM does not take advantage, at any given time, of any of the provisions of these T&Cs cannot be

interpreted as being a renunciation of PROSIM to avail itself of one of said stipulations at a later date.

- The PARTIES have expressly agreed and accepted the risk of the AGREEMENT being unpredictable, namely, in particular the risk of change in economic circumstances surrounding the conclusion of the AGREEMENT (price increase, cost increase, etc.) which would render the execution of the AGREEMENT excessively expensive for one PARTY. In this context, the PARTIES waive in particular the application of article 1195 of the French Civil Code.
- The PARTIES expressly agreed and agreed to derogate from article 1221 of the French Civil Code. Also, the creditor of an obligation may not, in any case, even after formal notice, continue the performance in kind.
- The PARTIES have expressly agreed and agreed to derogate from article 1222 of the French Civil Code. Also, the creditor of an obligation may not, under any circumstances, (i) have this obligation performed himself without prior and express agreement of the defaulting debtor or (ii) request the debtor to reimburse any sum incurred for this purpose, except prior and express authorization of the judge in this regard.
- None of the PARTIES may, in any case, unilaterally rescind the AGREEMENT. In the event of a serious breach by one of the PARTIES, the other PARTY must give formal notice to comply and, failing this, may terminate the AGREEMENT in accordance with the corresponding provisions of the AGREEMENT.
- The PARTIES may sign the SPECIFIC CONDITIONS by electronic signature in the cases and insofar as such a signature is recognized by the applicable law. An electronic signature of the SPECIFIC CONDITIONS made by the means of ELECTRONIC TRANSMISSION as defined below will be as legally binding as a handwritten signature. "ELECTRONIC TRANSMISSION" means any form of communication, not directly involving physical transmission of paper, which creates a record which can be retained, retrieved and examined by a recipient thereof, and which can be reproduced directly in paper form by such recipient through an automated process, provided the transmission is secure and all actions are tracked and recorded by a reliable system, which record may be retained, retrieved and reproduced by the recipient and the sender.