

General Terms and Conditions

for Hosting Services of the proALPHA Business Cloud

1. Contracting Parties, Subject Matter of the Contract

- 1.1 These General Terms and Conditions are set forth by proALPHA GmbH, registered with the commercial register of the district court Kaiserslautern, HRB 31613 (hereinafter "proALPHA").
- 1.2 These General Terms and Conditions become part of the agreement (hereinafter referred to as "Agreement") concluded on the basis of the acceptance of a quote (hereinafter referred to as "Quote") submitted by proALPHA and signed by both Parties (proALPHA and the "Customer"). Special regulations in the Quote shall take precedence over these General Terms and Conditions.
- 1.3 The Quote and these General Terms and Conditions conclusively govern the contents of the Agreement, excluding other contractual provisions, such as oral agreements or general terms and conditions of the customer. The latter are expressly rejected at this point.
- 1.4 The subject of service is the provision of hosting services by proALPHA to the Customer (hereinafter referred to as "Hosting") for the proALPHA ERP software and software components specified in the Quote (hereinafter referred to as "Contract Software") as well as the provision and operation of the IT system resources described in more detail in the Quote and the Service Specification, including hardware, storage space and the operating systems required for this purpose, as well as the provision of certain administration services and other services (hereinafter also referred to as "Business Cloud") for the Customer's Internet access to the Contract Software.

2. Scope of Services

- 2.1 The Quote contains the detailed specification of the services to be provided by proALPHA (hereinafter referred to as "**Service Specification**"). proALPHA reserves the right to make further developments and changes to services after conclusion of the Agreement in the context of changed statutory regulations, technological progress, error fixing or optimization of services. proALPHA shall therefore have the right to unilaterally change the Service Specification in the course of ongoing updates, insofar as this is done uniformly for all customers of similar Hosting services and this does not result in loss of essential functionalities existing at the time of

conclusion of the Agreement, and the service as a whole remains in a condition suitable for use as intended. The Customer shall not be entitled to the continued existence of individual functions or properties of the Hosting which do not significantly impair the intended use as a whole. The currently valid Service Specification in effect from time to time is provided by proALPHA via <https://www.proalpha.com/en/trustcenter>. The individual agreements made in the Quote with regard to remuneration, term, capacities, user numbers and customer contact shall remain unaffected.

- 2.2 The Customer may use the Business Cloud provided by proALPHA in accordance with the technical specifications set forth in the Service Specification and within the scope of the capacities and user numbers defined in the Quote. The commitment to availability and its calculation bases for the Business Cloud shall also be agreed upon in the Service Specification.
- 2.3 In addition, proALPHA shall provide certain proALPHA services to the Customer in accordance with the scope of services described in the Service Specification and the service times agreed upon for this purpose.
- 2.4 proALPHA shall be free to select the components (such as hardware) of the proALPHA Business Cloud to be provided.
- 2.5 proALPHA shall inform the Customer regarding any possible interruptions of the Hosting in accordance with the service levels (SLA) set out in the Service Specification and via the e-mail address agreed upon in the Quote.
- 2.6 The location of the data center out of which proALPHA provides the contractual Hosting is determined in the Service Specification. proALPHA shall be authorized to relocate the data center within the member states of the European Union at its own discretion.

3. Preconditions for Services

- 3.1 It is a precondition for the provision of the Hosting by proALPHA that the Customer has purchased the rights of use (licenses) for the Contract Software necessary for the use of the Contract Software according to the provisions from proALPHA or another company of the proALPHA Group and that the Customer has commissioned the implementation of the Contract Software and other functional customizations or individual interfaces by

separate agreement with proALPHA or from another company of the proALPHA Group. If, in addition, other software applications that are not provided by proALPHA (hereinafter referred to as "Third-Party Software") are the subject of the Hosting (to the extent permitted by proALPHA in accordance with the provisions in the Service Specification), it shall be a precondition that the Customer has acquired the rights of use (licenses) necessary for the proper use of the Third-Party Software by means of a separate agreement with the respective licensor and that the Customer has commissioned the implementation of the Third-Party Software by means of a separate agreement with proALPHA or a third-party provider.

3.2 Another precondition for the services by proALPHA is that the Customer has concluded a separate Software Maintenance Agreement with proALPHA for the Contract Software, which shall last without interruption for the duration of the Hosting agreed upon in the Quote. Only versions of the Contract Software currently supported by proALPHA can be used in the Hosting. The Contract Software follows an update and release (software maintenance) cycle of which the Customer shall be either notified at <https://www.proalpha.com/en/trustcenter> or by other means, which indicates the versions of the Contract Software supported by proALPHA. Further details are regulated in the Service Specification.

4. Service Demarcation Points

4.1 The demarcation points for the Hosting are defined in the Service Specification. The responsibility of the Parties for any interruptions or malfunctions changes at these demarcation points. The services of proALPHA shall be limited to the data communication of the Business Cloud operated by proALPHA in each case up to the demarcation points to the Internet defined in the Service Specification.

4.2 If the Hosting to be provided by proALPHA is impaired by circumstances beyond proALPHA's control, proALPHA shall not be responsible for any service interruptions in this respect (see section 16). This shall not affect certain monitoring obligations of proALPHA to notify the Customer of any interruptions in accordance with the SLA agreed in this Quote and the procedure agreed upon for this purpose.

5. Change Request Process

5.1 If the Customer requests modifications or amendments to the scope of services agreed in

the Quote ("Change Request") from proALPHA after the Agreement has been concluded, proALPHA shall review this request within an appropriate period of time and inform the Customer whether, and if so under what conditions, proALPHA is willing to implement the Change Request desired by the Customer. The Customer shall only be entitled to the implementation of a Change Request if the Parties have agreed in writing on the implementation of the Change Request and the required conditions. Until then, the previous scope of services shall remain in effect.

5.2 If the review of a Customer's Change Request requires a thorough analysis of whether and how proALPHA can implement the Change Request desired by the Customer, proALPHA shall inform the Customer accordingly, indicating the remuneration applicable for such an analysis. If the Customer then decides to commission proALPHA with the analysis, the Parties shall conclude a written agreement to this effect.

6. Subcontractors

6.1 proALPHA shall be entitled to commission subcontractors selected by proALPHA with the entire or partial provision of the contractual Hosting, at its own discretion and on its own account. The Customer expressly agrees to the deployment of the subcontractor. In this case, proALPHA shall be liable for any breach by the subcontractors during the provision of services to the Customer to the same extent as for its own negligence.

6.2 If proALPHA intends to subcontract third parties for the Hosting for which the third party has access to the Customer's personal data or processes the Customer's personal data in any other way, proALPHA shall inform the Customer about the intended involvement of the third party in advance in order to obtain the Customer's consent to the involvement of the third party. However, the Customer may only refuse the involvement of the third party with a good cause. If the Customer refuses the third party without such good cause, proALPHA shall be entitled, without prejudice to any other rights, to terminate the Agreement concluded without notice. In this case, the Customer shall pay the applicable services provided by proALPHA up to the termination in accordance with the Agreement at the prices agreed.

7. Use of the Hosting

7.1 The Hosting provided by proALPHA shall be used by the Customer and their affiliates in

accordance with the terms of the Quote. Hosting is limited to the Contract Software and any Third-Party Software. Changes require a separate written agreement between the Parties. The Customer shall be entitled to also use the Hosting provided by proALPHA to the Customer for the benefit of companies affiliated with the Customer pursuant to section 16 of the German Stock Corporation Act (Aktiengesetz) in accordance with these provisions. Beyond that, use by or for further third parties and/or making the Hosting publicly accessible is not permitted.

- 7.2 The customer undertakes not to upload any illegal content to the provided Business Cloud that violates the laws or regulations. The Customer undertakes to ensure that the Business Cloud or parts thereof are not overloaded by improper use. The Customer shall also ensure that programs and scripts installed by them do not disrupt and/or jeopardize the operation of the Business Cloud provided by proALPHA, in particular the communication network or the security and integrity of the Business Cloud and/or the operation of the data center, including third-party data in the data center used by proALPHA to provide the Hosting. To access the Business Cloud, the Customer shall exclusively use (end) devices that are equipped in accordance with generally accepted security standards and protected against unauthorized access by third parties. The services provided by proALPHA do not release the Customer from their obligation to comply with customary and recognized security standards, such as the use of regularly updated anti-virus programs, plausibility checks for incoming data, regular data backups, the regular change of passwords, and customary access control.
- 7.3 To access the Business Cloud intended for the Customer, the Customer shall receive a user ID and a changeable password. User ID and password shall be protected by the Customer in an appropriate manner against unauthorized access by third parties. The password must meet the applicable security requirements in accordance with the proALPHA Service Specification in terms of length and complexity. The Customer may only pass on user IDs and passwords to those employees who have been authorized by the Customer to access the Business Cloud, and who have been appropriately obligated to protect the user IDs and passwords against unauthorized access and use. The Customer shall be obligated to change the password if it suspects that the password has become accessible to unauthorized third parties. If the password is entered incorrectly three times

in a row, access to the proALPHA Business Cloud shall be blocked to protect against misuse. proALPHA shall inform the Customer of this. Upon request, the Customer shall receive a new password from proALPHA. In this case, proALPHA is authorized to reassign not only the password but also the user ID.

- 7.4 In the event of an imminent or actual violation of the Customer's obligations as described in the above paragraphs (2) or (3), proALPHA shall be authorized to temporarily block the Business Cloud completely or partly with immediate effect in order to avert any risks, taking into account the legitimate interests of the Customer. proALPHA shall inform the Customer of this action without delay. proALPHA shall immediately revoke the blocking as soon as there is no further violation of an obligation or any imminent danger has been averted.

8. Cooperation Obligations of the Customer

- 8.1 The Customer shall provide an Internet connection suitable for access to the Business Cloud at its own cost and expense, and maintain it for the duration of the Hosting agreed herein.
- 8.2 If the Customer has connected certain external applications to the Business Cloud via interfaces, the Customer shall be responsible for the operation of these external applications and their connection to the demarcation point. The regulations mentioned in the above paragraph (1) shall be applicable. To the extent that proALPHA provides Third-Party Software in the Hosting at the Customer's request, the Customer shall be solely responsible for the proper functioning, security and updating of such Third-Party Software. Third-Party Software also includes applications offered by third-party providers as complementary applications to the Contract Software. Further details are regulated in the Service Specification.
- 8.3 The backup services provided by proALPHA as described in the Service Specification shall not release the Customer from the obligation to take contingency measures against further types of data loss, transmission errors and operational malfunctions. The Customer shall, to the extent technically feasible, take appropriate backup measures to secure the programs and data used by it, including the permanent archiving of the backups provided by proALPHA. In addition, the Customer shall instruct the respective user of the Hosting in the use of the programs and data in a professional manner.
- 8.4 The Customer shall designate in text form at least one contact person and one deputy contact

person for proALPHA, who shall be at the disposal of proALPHA for the purpose of clarifying matters and shall be able to either provide and take binding information and decisions with respect to the Hosting agreed herein or to bring about such information and decision without delay.

- 8.5 In the case of a service failure, the Customer shall inform proALPHA about the failure immediately through the contact person. The Customer shall procure any necessary prerequisite services or approvals from third parties in good time and in appropriate quality, and shall provide them to proALPHA to the extent required. This also includes services provided by network operators, service providers or other third parties.
- 8.6 Insofar as the provision of services by proALPHA requires the further cooperation of the Customer, the Customer shall provide the necessary cooperation and services in accordance with the Agreement and free of charge for proALPHA. proALPHA shall request any further cooperation and/or provisioning services to be provided by the Customer from the Customer specifying their content and scope with reasonable notice.
- 8.7 proALPHA shall not be responsible for delays in the service provision resulting from the Customer or a third party employed by the Customer failing to fulfill their required cooperation or provision obligations in a timely manner, or does so only partially or poorly.
- 8.8 Without prejudice to any other rights, proALPHA may charge the Customer for any additional work arising for proALPHA due to the failure of the Customer or a third party commissioned by the Customer to fulfill their cooperation or provision obligations agreed on in the Individual Agreement in a timely manner or due to the partial or poor fulfillment of the cooperation obligations.

9. Remuneration

- 9.1 The Customer shall pay a monthly Hosting fee to proALPHA in accordance with the Quote.
- 9.2 The Hosting fee shall be charged to the Customer on a monthly basis in advance by proALPHA. The Hosting fee is calculated based on volume. If the volume used by the Customer exceeds the value defined in the Quote, proALPHA shall be entitled to charge additional fees for the excess uses in accordance with proALPHA's then valid prices.
- 9.3 The Hosting fees the Customer shall pay to proALPHA are net prices and shall be invoiced to

the Customer in addition to the applicable statutory sales tax. The Customer shall pay each invoice within fourteen (14) calendar days after invoicing by proALPHA without deduction.

- 9.4 If the wage cost index published by the Federal Statistical Office in the field of "Provision of Information Technology Services J62" for Germany on the basis of 1st quarter 2022 = 100 increases compared to the index published at the time of acceptance of the Quote, proALPHA may demand an increase in the then applicable Hosting fee. The benchmark for the increase shall be the change in the index since acceptance of the Quote, insofar as such an increase is equitable. The change shall become effective at the beginning of the contract year (calculated from the acceptance of the Quote). The above shall apply accordingly to any additional index change compared to the respective last change of the Hosting fee. If the Federal Statistical Office does not continue the wage cost index "Provision of Information Technology Services J62" during the contract period of the concluded Agreement and replaces it with another index, this new index shall be correspondingly applicable for the price increase. The right of proALPHA to demand an increase in the Hosting fee in the event of an expansion of the scope of services agreed upon herein shall remain unaffected by this adjustment regulation.
- 9.5 For the setup of the Business Cloud, the Customer shall pay the one-time setup fee specified in the Quote. The setup fee shall be invoiced to the Customer by proALPHA as soon as the Business Cloud is ready for operation. Operational provision is considered to have taken place when proALPHA sends the Customer the access data required to access the Business Cloud by e-mail and the Customer may log into the ERP client in the data center used by proALPHA. The Customer shall pay each invoice within fourteen (14) calendar days after invoicing by proALPHA without deduction.

10. Duration of the Hosting

- 10.1 The commencement of service for the Hosting is determined in the Quote.
- 10.2 The Quote shall have an initial term of twelve (12) months from the commencement of service. Termination of the Hosting for convenience during the initial term is not permitted.
- 10.3 Thereafter, the term of the Hosting shall automatically extend for a renewal term of a further (a) twelve (12) months if the initial term is 12 months or longer, or (b) three (3) months if the initial term is shorter, unless either Party has

given notice of termination not less than one (1) month prior to the expiration of the initial term or renewal term, as the case may be.

10.4 Termination notices must be made in writing.

10.5 The right of termination for cause remains unaffected.

11. Consequences of Termination of the Agreement

11.1 Upon termination of the Agreement concluded on the basis of the Quote, proALPHA shall, at the Customer's request, surrender to the Customer all documents and data received by proALPHA from the Customer in relation to the performance of agreed services, unless such documents or files have either been consumed or forwarded by proALPHA as intended in the course of rendering the Agreement and are, therefore, no longer in the possession of proALPHA upon termination of the Agreement. proALPHA shall delete or destroy all copies, documents and/or data of the Customer that are still in the possession of proALPHA at the end of the Agreement and the surrender of which is not requested by the Customer within a reasonable period of time, and shall confirm the deletion/destruction to the Customer in writing upon request. This shall not apply to correspondence and to other documents, data or records to be retained in accordance with statutory provisions or to documents, records or data intended to remain with proALPHA.

11.2 Upon termination of the Agreement concluded on the basis of this Quote, for whatever legal reason, all rights of use of the Customer of the agreed Hosting shall cease.

12. Malfunctions

12.1 proALPHA shall remedy malfunctions in the Hosting within a reasonable period of time and in accordance with the agreed service levels (SLA).

12.2 There shall be no obligation to eliminate a malfunction in case of scheduled or unscheduled necessary maintenance tasks proALPHA performs in the Hosting environment or if the Customer is responsible for the malfunction or if a malfunction reported by the Customer does not exist. The Customer shall be responsible for a malfunction in particular if it is caused by unauthorized interference by the Customer or by third parties commissioned by the Customer with the Business Cloud or by improper operation or handling of the Business Cloud by the Customer, by third parties commissioned by

the Customer or by Third-Party Software.

12.3 The Customer shall reimburse proALPHA for the expenses incurred by proALPHA in the investigation of the service or machines or the elimination of the malfunction if, after the investigation, it turns out that proALPHA was not obligated to eliminate the malfunction.

13. Liability

13.1 For damages resulting from injury to life, body or health of a person, for damages resulting from the breach of a warranted condition of a material, and for damages for which proALPHA is liable in accordance with the German Product Liability Act (ProdHaftG), proALPHA shall have unlimited liability in accordance with the legal provisions. In addition, proALPHA shall have unlimited liability in accordance with statutory provisions for breaches caused intentionally or through gross negligence.

13.2 proALPHA shall be liable for slight negligence, for whatever legal reason, if the breach concerns a cardinal contractual obligation whose observance enables the proper performance of the Quote and on whose performance the Customer may typically rely on. In such cases, the liability of proALPHA shall be limited to the damage which is typically foreseeable at the time of submission of the Quote. The Parties agree that for typical and foreseeable damages, the amount of liability per contract year shall be limited to eighty percent (80%) of the fees paid by the Customer under this Contract during the twelve (12) months preceding the occurrence of the loss.

13.3 Insofar as proALPHA is obligated to compensate for the restoration of destroyed or lost data due to the breach of an obligation, compensation shall be limited to such efforts which would have been necessary for the restoration of the data if the Customer had properly backed up their data, but not beyond the amount which has to be paid by proALPHA in accordance with the liability limitations stipulated herein.

13.4 Any further liability of proALPHA other than that specified in this section 13 shall be excluded, especially proALPHA's liability for loss of profits and indirect damages of the Customer.

13.5 The present agreed liability shall also be applicable for legal representatives, organizations, subcontractors, and vicarious agents of proALPHA insofar as these persons are personally liable to the Customer.

14. Confidentiality

14.1 Both Parties mutually agree to keep confidential all non-public information of the other Party of which they become aware of in the course of the Quote (hereinafter referred to as "Confidential Information") and to use it solely for the execution of the contractual relationship. The obligation of confidentiality shall not apply, however, to such information for which the receiving Party proves that: (a) it was known to the Party without being subject to a nondisclosure agreement before the disclosure by the disclosing Party; or (b) it was made available to the Party by an authorized third party after the disclosure by the disclosing Party for the purpose of unrestricted use and without breach of contractual or legal confidentiality obligations; or (c) it was already known at the time of the disclosure by the disclosing Party or subsequently entered the public domain without a breach of contractual or legal confidentiality obligations; or (d) it had been independently developed by the receiving Party before the disclosure by the disclosing Party.

14.2 Notwithstanding the above, the receiving Party is authorized to disclose or share the Confidential Information provided by the disclosing Party with the following parties to the extent necessary: (a) the employees involved in the performance of the Agreement employed at the receiving Party's own company or the companies affiliated with the receiving Party as described in Section 15 of the German Stock Corporation Act (AktG) or Section 271 Para. 2 of the Commercial Code (HGB) and (b) the lawyers, tax consultants, and auditors hired by the receiving Party. proALPHA shall also be authorized to disclose or share Confidential Information of the Customer as far as required with employees of companies that proALPHA justifiably commissions as subcontractors in accordance with the provisions of this Agreement.

14.3 Insofar as the receiving party is entitled to disclose or make available Confidential Information of the disclosing Party to third parties, this right is subject to the condition that the receiving Party has previously informed the third party about the confidential nature of the information concerned and has obligated the third party in writing to maintain confidentiality in a manner appropriate to the present confidentiality rules, unless such written confidentiality undertaking by the third party already exists on another legal or contractual basis (e.g., by law or on the basis of an employment contract).

14.4 Unless a longer confidentiality obligation applies by Individual Agreement or by law, Confidential Information of the disclosing Party shall be kept confidential by the receiving Party for a period of two (2) years after termination of this Agreement.

15. Protection of Data

15.1 To the extent proALPHA has access to the data of the Customer during the provision of the services, proALPHA shall take all technical and organizational measures that are customary according to the state of the art of technology to sufficiently protect the Customer's data against unauthorized access, interference, destruction or loss. In addition, proALPHA shall observe the confidentiality obligations agreed between the Parties when handling the Customer's data.

15.2 To the extent proALPHA processes personal data for the Customer that are subject to the General Data Protection Regulation (GDPR), the Parties shall hereby conclude a Data Processing Agreement according to Article 28 GDPR. The Customer must download the Data Processing Agreement from <https://www.proalpha.com/en/trustcenter> which shall be deemed an Annex to this Agreement.

16. Force Majeure

16.1 proALPHA shall not be accountable for delays in service due to force majeure or equal situations. In such cases, proALPHA shall be entitled to delay the rendering of the service affected by the impairment for its duration plus a reasonable resumption period.

16.2 Force majeure is an unpredictable external event that cannot be averted at all or could not be averted in time even with the application of reasonably expected care and technically and economically reasonable measures, including any official measures related thereto. Force majeure includes in particular, without limitation, the following: war, insurrection, riots, embargo, explosion, fire, flood, severe weather, terrorist attacks, sabotage, nuclear and reactor accidents, pandemics or widespread failure of communication networks/the Internet.

16.3 If an event of force majeure results in proALPHA not being able to render its services at all, not being able to render them completely or not being able to render them on time, proALPHA shall notify the Customer in writing without delay about the nature of the event and the expected impact on the contractual obligations, in particular on the provision of the contractual

deliveries and services.

16.4 To the extent that proALPHA is prevented from providing deliveries and/or services by a force majeure event, proALPHA shall make all reasonable efforts to limit the effects of the force majeure event on its obligation to render as far as possible. The Parties shall agree to use online means of communication/online platforms to a reasonable extent for this purpose or to provide or receive corresponding services also by way of remote transmission (remotely).

16.5 Upon termination of the force majeure event, proALPHA shall notify the Customer thereof without undue delay and resume its work of delivery and/or performance.

17. Export Restrictions

17.1 All deliverables and services provided by proALPHA abroad or accessed from abroad are subject to the reservation that no national or international export regulations prevent the provision, especially export control regulations and embargos or other restrictions on the export of deliverables or services. The Parties mutually agree to provide all information and documents required for the export/transfer/import/access belonging to their respective area of responsibility. Delays due to export inspections or approval processes shall invalidate deadlines and delivery times. If required export approvals are not granted by the responsible authority, the Individual Agreement shall be null and void in respect of the affected parts. Claims for damages are excluded in this respect and due to the before mentioned exceeded deadline.

17.2 proALPHA draws the attention of the Customer to the fact that the Contract Software is subject to the regulations of the United State Department of Commerce and the United States Export Administration Act. This applies to the Progress database software provided by proALPHA. proALPHA and the Customer shall therefore be obligated to respect the following restrictions which are governed by the aforementioned US regulations:

- a) The Contract Software may neither directly nor indirectly be delivered or forwarded to a country on which the USA have imposed an embargo. This also applies to access from such countries to the Business Cloud operated by proALPHA for the Customer.
- b) Furthermore, the Contract Software may neither directly nor indirectly be

used in connection with the planning, development, production, or usage of nuclear, chemical or biological weapons without prior consent of the responsible authority within the USA, which shall be obtained by proALPHA upon the Customer's request. This prohibition also includes the obligation to not develop, offer and/or deliver products or services, which may serve the above prohibited purposes by means of the Contract Software concerned.

18. Assignment

18.1 The Customer may neither partially nor wholly assign contractual rights under this Agreement to a third party without proALPHA's prior written consent. This does not include any money claims of the Customer.

19. Subsidiary Agreements

19.1 The Agreement and the corresponding Annex hereto constitute the entire agreement between the Parties. No tacit, oral or written side agreements have been made. Amendments or supplements to the Framework Agreement shall only be effective if they are agreed in writing. The same shall apply to a change to the written form requirement.

20. Choice of Law, Place of Jurisdiction

20.1 This Agreement shall be governed by the law of the Federal Republic of Germany, excluding any choice of law provision and to the exclusion of the UN Sales Convention (CISG).

20.2 The exclusive place of jurisdiction for all disputes arising from and in connection with this Agreement is Kaiserslautern, Germany.

21. Severability Clause

21.1 Should any provision of this Agreement or its Annexes be or become invalid or contain a gap, this shall not affect the validity of the remaining provisions. The void provision shall be deemed replaced by a legally valid provision that comes closest to the commercial intentions of the Parties. The same shall apply to filling a gap.

21.2 In the event of a legally inadmissible deadline, an effective deadline shall be agreed.