



# General Terms and Conditions

of **PI Probaligence GmbH**, Am Technologiezentrum 5, 86159 Augsburg, Germany

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## 1. Scope

1.1 These General Terms and Conditions (GTC) apply to our business relationships with our customers, provided that they are not based on a license agreement for software products, for which the exclusive validity of the PI Probaligence framework agreement for software licensing, which can be viewed at [www.probaligence.de/documents](http://www.probaligence.de/documents), has been agreed.

The General Terms and Conditions only apply if the customer is an entrepreneur (Section 14 of the German Civil Code), a legal entity under public law or a special fund under public law within the meaning of Section 310 § 1 of the German Civil Code.

1.2 Our general terms and conditions apply exclusively, subject to section 1.1. Any deviating, conflicting or supplementary general terms and conditions of the customer will only become part of the contract if and to the extent that we have expressly agreed to their validity. This consent requirement also applies if the customer refers to his general terms and conditions when placing the order and we have not expressly objected to the customer's general terms and conditions.

1.3 These general terms and conditions apply in particular to contracts for the goods and services we offer. Unless otherwise agreed, the general

terms and conditions apply in the version valid at the time of the customer's order or in the version last communicated to the customer in text form as a framework agreement for similar future contracts, without us having to refer to them again on a case-by-case basis.

1.4 Individual agreements made with the customer in individual cases (including collateral agreements, additions and changes) and information in our order confirmation take precedence over these General Terms and Conditions. The content of such agreements is determined, unless there is evidence to the contrary, by a written contract or our written confirmation.

1.5 Legally relevant declarations and notifications from the customer regarding the contract (e.g. notifications of defects, setting of deadlines, withdrawal or reduction) must be made in writing, i.e. in written and text form (e.g. letter, e-mail, fax). Further legal formal requirements and further evidence (if there are doubts about the legitimacy of the person making the declaration) remain unaffected.

1.6 If references are made to the validity of statutory provisions, it should be noted that these are for clarification purposes only. The statutory provisions apply - even if no corresponding clarification has been made - to

the extent that they are not modified or excluded by the General Terms and Conditions.

## **2. Offer and conclusion of contract**

2.1 Our offers are non-binding and subject to change. This also applies if we have provided the customer with technical documentation (e.g. calculations, simulations, models) and other product descriptions or documents (also in electronic form). We reserve ownership rights to all documents provided to the customer in connection with the order. These documents may not be made accessible to third parties unless we give the customer our express written consent to do so.

2.2 An order placed by the customer with reference to a non-binding offer made by us is a binding contractual offer in accordance with §145 of the German Civil Code (BGB). In the event that nothing else arises from the order, we are entitled to accept this contractual offer within two weeks of receipt of it.

2.3 We will confirm acceptance of the customer's contract offer in writing, i.e. in written and text form (e.g. letter, email) by means of an order confirmation. The contract is concluded when the customer receives the order confirmation.

## **3. Customer's obligation to cooperate**

3.1 The customer must provide us with the information and documents required to provide the service properly and professionally. The customer must also inform us of any special risks that may arise for us or our employees due to the nature of the respective project.

3.2 If the customer does not comply with his obligation to cooperate in accordance with section 3.1, we can request him to cooperate within a reasonable grace period. If the customer

nevertheless does not comply with his obligation to cooperate, we are entitled to withdraw from the contract and demand reimbursement of the expenses incurred up to that point from the customer.

## **4. Obligation to accept**

4.1. According to § 640 of the German Civil Code (BGB), the customer is obliged to accept the service provided by us in accordance with the contract. Acceptance cannot be refused due to minor defects.

4.2 Our service is deemed to have been accepted if we have set the customer a reasonable deadline for acceptance after provision of the service and the customer has not refused acceptance of the service within this deadline by stating at least one defect.

## **4. Rights of use**

4.1 We would like to point out that our services may be protected by copyright or other legal rights. If this is the case, we grant the customer a non-exclusive, spatially and temporally unlimited and non-transferable right of use for the service.

4.2 The remuneration for the granting of the rights of use according to Section 4.1 is included in the remuneration agreed for the service.

## **5. Confidentiality**

We and the customer are obliged to maintain confidentiality towards third parties regarding what is designated as confidential by the other contracting party during the preparation and implementation of the contract or what is obviously confidential.

## **6. Prices and payment arrangements**

6.1 Our offers usually contain fixed prices. Unless otherwise agreed in writing in individual cases,

our prices current at the time of conclusion of the contract apply, plus statutory sales tax.

6.2 Payments must be made exclusively to the account specified on our invoices. Cash discounts are only permitted if specifically agreed in writing.

6.3 Unless otherwise agreed, payments are due within fourteen days of acceptance of the service and receipt of the invoice issued by us.

6.4 D The customer is in default if the above payment deadline expires. During the default, the purchase price will be subject to interest at the applicable statutory default interest rate according to § 288 section 2 of the German Civil Code (BGB) in the amount of nine percentage points above the respective base interest rate. We reserve the right to assert further damages for default. In the case of merchants, our claim to commercial default interest according to § 353 of the German Commercial Code (HGB) remains unaffected.

6.5 If, after conclusion of the contract, it becomes apparent that our claim for payment is at risk due to the customer's inability to pay (e.g. due to an application for the opening of insolvency proceedings), we are entitled to refuse performance and, if necessary after setting a deadline, to withdraw from the contract in accordance with the statutory provisions (§ 321 of the German Civil Code). The statutory provisions regarding the dispensability of setting a deadline remain unaffected in this respect.

## **7. Retention rights**

The customer is only entitled to rights of set-off or retention if his claim has been legally established or is undisputed and his counterclaim is based on the same contractual relationship. In the event that defects occur in the provision of services, the customer's counterclaims, in

particular in accordance with Section 9 of these General Terms and Conditions, remain unaffected.

## **8. Delivery date and delay in delivery**

8.1 The delivery date will be agreed individually or communicated by us in our offer and confirmed in the order confirmation upon acceptance of the order.

8.2 In the event that we are unable to meet contractually agreed delivery dates for reasons beyond our control, we must inform the customer of this fact immediately and at the same time provide the expected or new delivery dates. If a delayed delivery cannot be made even on the newly announced delivery date, we are entitled to withdraw from the contract in whole or in part. In this case, we must immediately reimburse the customer for any consideration already provided.

8.3 Whether a delivery delay exists is determined according to the statutory provisions. However, a prerequisite for a delivery delay is a reminder from the customer.

8.4 The customer's rights pursuant to Section 9 of these General Terms and Conditions and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of the performance and/or subsequent fulfillment), remain unaffected.

## **9. Customer's claims for defects**

9.1 The statutory provisions apply to the customer's rights in the event of material and legal defects, unless otherwise specified below. The customer's rights arising from separately issued guarantees remain unaffected.

9.2 Agreements that we have made with customers regarding the quality and the intended use of the service generally form the basis of our liability for defects within the scope of the warranty. A quality agreement includes all service descriptions that are the subject of the individual contract. In the event that no quality has been agreed, it must be assessed according to the provisions of § 633 Section 2 Sentence 2 of the German Civil Code (BGB) whether a defect exists.

9.3 If the customer accepts a work that is defective according to clause 9.2, although he is aware of the defect, he is only entitled to the rights specified in § 634 numbers 1 to 3 according to § 640 section 3 of the German Civil Code (BGB) if he reserves his rights due to the defect upon acceptance.

9.4 If the service is defective, we have the right to choose whether we will provide subsequent performance by eliminating the defect (repair) or by delivering a defect-free product (subsequent delivery). If the type of subsequent performance we have chosen is unreasonable for the customer in the individual case, he can refuse it. However, we reserve the right to refuse subsequent performance under the statutory conditions.

9.5 The customer must grant us the necessary time and opportunity to provide subsequent performance.

9.6 We may demand reimbursement from the customer for costs incurred due to an unjustified request for defect rectification in the event that the customer knew or could have known that there was actually no defect.

9.7 The customer has the right to remedy the defect himself and to demand reimbursement of the objectively necessary expenses if the case is urgent (e.g. to prevent disproportionate damage).

The customer must inform us immediately if he undertakes to remedy the defect himself.

9.8 The customer can withdraw from the contract or reduce the purchase price in accordance with the statutory provisions if a deadline set by the customer for subsequent performance has expired without success or is unnecessary according to the statutory provisions. In the event of a minor defect, however, the customer has no right of withdrawal.

9.9 Claims for damages or claims for reimbursement of wasted expenses incurred by the customer (§ 284 of the German Civil Code) exist even in the event of a defect only in accordance with Sections 10 and 11.

## **10. Limitation period**

10.1 The general limitation period for claims resulting from material or legal defects is one year from acceptance, in deviation from § 634 Section 1 No. 1 of the German Civil Code (BGB).

10.2 According to the statutory regulation, the limitation period is 5 years from acceptance (§ 634 Section 1 No. 2 BGB) in the event that the service is a building or a work the success of which consists in the provision of planning or monitoring services for this purpose.

10.3 The above limitation periods under the law on work contracts also apply to contractual and non-contractual claims for damages by the customer that are based on a defect in the service, unless the application of the regular statutory limitation period according to § 195 and 199 of the German Civil Code would lead to a shorter limitation period in individual cases. Claims for damages by the customer according to Sections 11.1 and 11.2.a) as well as those under the Product Liability Act expire exclusively according to the statutory limitation periods.

## **11. Other liability**

11.1 Unless otherwise stated in these General Terms and Conditions, including the following provisions, we shall be liable for breaches of contractual and non-contractual obligations in accordance with statutory provisions.

11.2 In the context of liability based on fault, we are liable for damages only in the event of intent and gross negligence, regardless of the legal basis. In the event of simple negligence, we are liable, subject to statutory limitations of liability (e.g. care in one's own affairs; insignificant breach of duty), only:

a) for damages resulting from injury to life, body or health,

b) for damages resulting from the breach of an essential contractual obligation (obligations whose fulfillment makes the proper execution of the contract possible in the first place and on whose compliance the contractual partner relies and may rely). In this case, however, our liability is limited to compensation for foreseeable, typically occurring damage.

11.3 The liability limitations arising from section 11.2 also apply to third parties and to breaches of duty by persons whose fault we are legally responsible for. If a defect was fraudulently concealed and/or a guarantee was given, the liability limitations do not apply. This also applies

to customer claims under the Product Liability Act.

11.4 The customer may withdraw or terminate the contract due to a breach of duty that does not result from a defect only if we are responsible for the breach of duty.

## **12. Choice of law and jurisdiction**

12.1 These General Terms and Conditions and the contractual relationship between us and the customer are governed by the law of the Federal Republic of Germany, excluding the conflict of laws of international private law and the UN Convention on Contracts for the International Sale of Goods.

12.2 If the customer is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, Düsseldorf/Germany is the exclusive and international place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. The same applies if the customer is an entrepreneur within the meaning of § 14 of the German Civil Code.

12.3 We are also entitled to file a lawsuit at the place of performance in accordance with these General Terms and Conditions or a prior individual agreement or at the customer's general place of jurisdiction. Priority statutory provisions (exclusive places of jurisdiction) remain unaffected by this.