General Terms and Conditions

procilon GROUP GmbH
procilon GmbH

Leipziger Straße 110
D-04425 Taucha
(hereinafter referred to as the "provider")

§ 1 Scope of General Terms and Conditions

All services to be rendered or contractual obligations to be fulfilled by the provider are exclusively based on these General Terms and Conditions. They shall also apply to all future business relations, even if they are not expressly agreed again. These Terms and Conditions shall also apply if conflicting confirmations are made by other parties with reference to other terms of business or purchase. Conflicting confirmations with reference to other terms and conditions are herewith contradicted. The provider does not recognize any conflicting business terms or other conditions. Deviations from the present General Terms and Conditions shall take effect only when they are agreed in writing or the writer confirms them in writing.

§ 2 Conclusion of the contract

1. The provider reserves the right to accept orders or offers of the (possible future) contractual partner in writing, by fax or by e-mail within a period of 14 days; a contract shall only be concluded through such order confirmation. If the content of the order confirmation deviates from the offer or the order, a new offer is available to which the provider is bound for 14 days. The contract is concluded on the basis of this new offer if the contractual partner declares acceptance within this period of 14 days; otherwise no contract is concluded between the provider and the contractual partner.

2. The provider shall be bound by its own offers for 14 days from submission, unless agreed otherwise in writing.

§ 3 Implementation of the contract

I. General

1. The contractual partner undertakes to treat all information about the product to be delivered or delivered and/or the service to be provided or provided as well as the pre-contractual and contractual correspondence as confidential for the term and after termination of the contract. The contractual partner undertakes to instruct their employees accordingly. Any personal data that become known to the respectively other party in the course of the initiation and performance of the contractual relationship shall be treated in accordance with the provisions of the German Federal Data Protection Act.

2. Any copyrights, intellectual property rights as well as other property rights of the provider shall be protected by the contractual partner against unauthorized third-party access. Existing labels, industrial property right notices or proprietary notices of the provider on or in the products shall not be removed by the contractual partner, unless agreed otherwise by the contracting parties in writing. They shall also be included in copies made.

3. The contractual partner shall undertake to create all requirements necessary for the proper performance of the contractually agreed service of the provider.

II. Special types of contract

1. Purchase contracts

a) Delivery and the transfer of risk shall be deemed to have taken place upon handover of the purchased item and the accompanying materials to the contractual partner. If the hardware and/or software is dispatched, the risk shall be transferred to the contractual partner when the consignment has been handed over to the transport company by the provider or manufacturer or pre-dealer. If the shipment is delayed through none of the provider's fault, the risk shall be transferred to the contractual partner when the notification of readiness for shipment is sent to the contractual partner. Insurance of the hardware and/or software against transport damage shall only be taken out at the express request and expense of the contractual partner.

b) In the case of purchase contracts for hardware or licenses supplied by the provider (transfer of rights of use) and software purchase contracts, the provider shall reserve the title to the purchased item until receipt of all payments under the contract. If the contractual partner is in default of payment or if one of the cases listed in clause d) below occurs, the provider shall be entitled to request the return of the purchased item delivered under retention of title and/or to revoke or delete any rights of use/licenses granted, without this constituting a withdrawal from the contract – subject to the application of mandatory legal provisions to the contrary. Repossession shall only take place to secure the provider's claims; the contractual partner shall continue to be bound to fulfil the contract.

c) The goods subject to retention of title must not be pledged or transferred by way of security. The contractual partner herewith assigns to the provider the claims that arise from the resale or any other legal grounds with regard to the goods subject to retention of title in their entirety as collateral.

d) The contractual partner shall notify the provider promptly if
aa) if third parties assert rights to the collateral property of the provider through seizure, attachment, exercise of the landlord's lien or similar measures, which impair or endanger the property and/or the indirect possession of the provider. The contractual partner shall undertake to advert to the provider's property if third parties access the goods subject to retention of title, in particular by seizure.
bb) the contractual partner has filed an application to open insolvency proceedings against its assets
cc) the contracting partner has stopped payments.

e) Hardware and software supplied for test and demonstration purposes shall remain property of the provider. It may be used by the contractual partner only within the scope of the special agreement with the provider. Such agreement may be temporary. After expiry of the temporary right of use, all parts of the hardware and software must be returned to the provider at the customer's expense without being requested to do so. If copies were made of the software provided, such copies must be destroyed after the right of use has expired. This shall also apply if a limited right of use has been granted for software by contract. Any deviation from this provision must be stipulated in writing in the contract.

2. In the case of IT service agreements, the provider provides consulting and installation services as well as software developments within the scope of the specific contractual arrangements. The contractual partner shall accept the services owed by the provider in general on a performance record provided by the provider. If the contractual partner uses the services rendered by the provider or the product provided by the provider for more than four weeks after notification of completion by the provider without notifying the provider of any defects, the acceptance shall be deemed to have taken place. The receipt of a final invoice from the provider is equivalent to a notification of completion.

3. For cloud computing contracts, the provider shall guarantee an availability level of the internet infrastructure of 98 percent on an annual average. This shall not apply to pages on which the accessibility is limited due to technical or other problems that are beyond the provider's control (force majeure, third-part fault, etc.).

a) The provider may restrict access to the services if the network operation safety, the maintenance of the general server operation as well as the network integrity, in particular the avoidance of serious disruptions of network, software or stored data, require doing so.

b) If the provider provides additional services free of charge, the contractual partner shall have no claim to their performance. The provider may discontinue or change services that were previously free of charge at any time within a reasonable period or offer them in the future only against payment. The provider shall promptly inform the contractual partner about such a case.

c) The agreed rates shall apply. The data transfer volume used is the sum of all data transfers (e.g., e-mails, downloads, uploads, websites) in connection with the respective contract concluded with the contractual partner and shall be invoiced monthly as incurred.

d) The contractual partner shall create/have created daily backup copies of its internet presence, which may not be stored on the web server itself, in order to ensure a fast and cost-effective recovery of the internet presence in the event of a possible system failure. The contractual partner assures that the data provided is correct and complete. It undertakes to inform the provider without delay of any changes of the provided data and to reconfirm the current accuracy at the provider's request within 14 days after receipt of such request. This shall apply in particular to the complete contact data of the contractual partner and their technical contact. The contractual partner shall retrieve the incoming messages from its e-mail inboxes at regular intervals of no more than 4 weeks. The provider reserves the right to return personal messages received for the contractual partner to the sender if the capacity limits provided for by the respective rates are exceeded.
The contractual partner undertakes not to send or cause to be sent any e-mails containing advertising without the consent (in terms of article 7, section 2 UWG (German Law against Unfair Competition)) of the respective recipient. This shall apply in particular if such e-mails are distributed en masse, each with the same content (so-called "spamming"). If the contractual partner violates the aforementioned obligation, the provider shall be entitled to block the rate immediately and to condition the unblocking on the submission of corresponding evidence.
The contractual partner undertakes to keep passwords received from the provider for the purpose of accessing the provider's services strictly confidential and to inform the provider promptly when it notices that the password is known to unauthorized third parties. If, due to the contractual partner's fault, third parties use the provider's services by misusing passwords, the contractual partner shall be liable to the provider for damages. The contractual partner is advised that it is responsible to carry out a data backup after each workday on which the data stock has been changed by the contractual partner or its vicarious agents or assistants; data stored on the servers by the provider are, however, not be stored on this backup server.
The contractual partner shall carry out a complete data backup, in particular every time before the provider starts working or before the installation of supplied hardware or software. The contractual partner shall also thoroughly test each program for freedom from defects and usability in the specific situation before commencing operational use of the program. This shall also apply to programs received from the provider within the scope of warranty and maintenance. The contractual partner is expressly informed that even minor changes to the software can influence the operability of the entire system.
The contractual partner further undertakes not to use the resources provided by the provider for the following activities:
- unauthorized intrusion into third-party computer systems (hacking)
- obstructing third-party computer systems by sending/forwarding data streams and/or emails (e-mail bombing)
- searching for open accesses to computer systems (port scanning)
- sending e-mails to third parties for advertising purposes, unless it may be assumed that the recipient is interested (e.g. after request or previous business relationship)
- forging IP addresses, e-mail and news headers, and spreading viruses.
If the contractual partner violates one or more of the above obligations, the provider shall be entitled to discontinue all services immediately. The provider expressly reserves the right to assert claims for damages.

4. If the provider has to maintain software and/or provide services within the scope of a support contract or another contractual relationship, according to which the provider has to access hardware and/or software of the customer, the provider shall not collect, process or use any personal data of the customer and/or third parties. In order to ensure that, the customer undertakes to make sufficiently suitable test data available free of charge and without restriction for the performance of the order by the provider. The provider shall be entitled to refuse to provide services until such test data has been made available.

§ 4 Prices/payment

1. All prices are exclusive of statutory value-added tax, unless expressly stated otherwise by the provider. Prices are stated in Euro. They do not include any expenses, packaging or shipping costs, if such costs incur.

2. If man-days or man-hours are agreed as the basis for invoicing, the actual expenditure incurred by and on the part of the provider shall be measured and indicated in the invoice. The lowest invoicing basis per day is 1/8 for man-days and 1/4 for man-hours.

3. Unless otherwise agreed in writing, invoices shall be due for payment immediately and in full.

4. The timeliness of the payment does not depend on the dispatch of the money, but on when it is credited to the provider's account.

5. The provider shall be entitled to demand an advance payment of 30 percent of the agreed sum or, if hourly rates were agreed, an advance payment of 30 percent of the agreed hourly rates after the contract was concluded. If the contractual partner is in default of the down payment or the advance payment pursuant to art. 4 sec. 5 clause 3 above for more than 7 working days, then the provider shall be entitled optionally to refuse to provide the provision of service definitively and to demand compensation for damages instead of the service or reimbursement of futile expenses or to withdraw from the contract.

6. Except for the provisions set forth in art. 4 sec. 4 above, the contractual partner shall be in default if it fails to settle due payments within 30 days after the receipt of an invoice or equivalent request for payment. The provider reserves the right to cause default earlier in time by issuing a reminder which is received after the due date. Notwithstanding sentences 1 and 2, the contractual partner shall be in default if it was agreed that the remuneration is to be paid at a specified calendar date and the contractual partner does not make payment by this date at the latest.

7. If the contractual partner is in default of payment, the provider shall be entitled to demand default interest at the rate of 10 percent above the respective base interest rate, unless the contractual partner proves a lower interest loss actually incurred by the provider.

8. The provider shall be entitled to charge the contractual partner a lump-sum reminder fee of € 10.00 for each reminder, unless the contractual partner can prove that the expenses incurred by the provider were lower.

9. The provider shall be entitled to refuse the acceptance of bills of exchange or checks.

§ 5 Times of delivery/service

1. Delivery or service dates are binding only if they were agreed in writing in the contract.

2. Even in the case of bindingly agreed deadlines and dates, the provider shall not be responsible for delays in delivery and performance due to force majeure.

3. Compliance with the delivery/service times on the part of the provider presupposes the timely and proper fulfillment of the contractual obligations by the contractual partner. Subsequent requests for changes and additions by the contractual partner shall extend the delivery period appropriately.

§ 6 Warranty

1. All warranty claims of the contractual partner shall lapse one year after the statutory commencement of the limitation period unless the contractual partner is a consumer. In this case, the statutory provisions shall apply. The short limitation period as stipulated in sentence 1 shall also apply to claims for compensation for consequential harm caused by a defect, unless claims in tort are asserted.

2. The contractual partner has the obligation to immediately inspect the delivered purchase item and/or rendered services for obvious defects. Any trader's obligations to inspect and complain of defects shall remain unaffected by this provision. If the contractual partner believes that there are defects in the purchased goods or the services to be provided by the provider, the contractual partner shall notify the provider promptly, giving a brief description of the defect.

3. If notified defects are not detected in an inspection by the provider, the contractual partner shall bear the costs of such inspection. If defects detected are due to faulty operation or malfunctions for which the contractual partner is responsible, the contractual partner shall also bear the costs of the inspection. Another requirement for the elimination of defects is that the reported defect is reproducible.

4. If a defect is available and the provider's obligation to remedy the defect is not excluded under statutory, contractual or above provisions, the provider shall be entitled to remedy the defect or to make a replacement delivery/produce a replacement at its own discretion.

5. If the remedy of a defect fails twice or the provider is not willing or able to remedy the defect or to provide a replacement delivery/production of a replacement or if this is delayed beyond a reasonable period for reasons the provider is responsible for, the contractual partner shall be entitled to assert the due rights under the applicable laws.

6. Warranty claims against the provider must not be transferred.

§ 7 Liability

1. The provider shall be liable without limitation for damages caused by the provider or its legal representatives or vicarious agents due to negligence or intentional injury to life, body or health.

2. For other damages, the provider shall in any case be liable without limitation for damages caused by the provider or its legal representatives or vicarious agents due to gross negligence or intent.

3. The provider shall be liable for other damages caused by the provider or its legal representative or vicarious agents due to negligence only if material contractual obligations are affected.
A material contractual obligation is an obligation the fulfillment of which is a requirement for the proper performance of the contract and compliance with which the contractual partner may regularly rely on. In the case of breaches of material contractual obligations, the liability shall be limited to the extent of the damage that the provider typically had to expect at the time the contract was concluded on the basis of the circumstances it was aware of at that time. In that case, the provider shall not be liable for indirect or consequential damages or lost profits.

4. In all other respects the liability of the provider for negligence shall be excluded.

5. Liability under the German Product Liability Act shall remain unaffected. Furthermore, the above limitation of liability shall not apply if the contractual partner asserts claims for damages due to the absence of a warranted property

§ 8 Rights of retention/termination

1. Without prejudice to the other rights granted to the provider, the provider shall be entitled to withhold any services not yet rendered under all existing contractual relationships in the

event of default of payment or failure of the contractual partner to provide essential cooperation under the contract.

2. In the case of contracts for work and services concluded between the provider and the contractual partner, the contractual partner may terminate the contract at any time until the performance owed by the provider has been completed. If the contractual partner terminates the contract, the provider shall be entitled to request the agreed payment; however, the provider must offset any amounts saved as a result of the termination of the contract or acquired through the use of its labor elsewhere or which it maliciously refrains from acquiring. Unless the contractual partner proves a higher share of saved expenses in individual cases, such share shall be agreed to be 40 percent of the remuneration for the services not yet rendered by the provider. If the contractual partner wants to make a deduction due to acquisition through other use of the provider's labor or malicious omission of other acquisition, the contractual partner shall bear the burden of proof in this respect as to the reason and the amount.

§ 9 Miscellaneous

1. The contractual partner may only offset undisputed or legally established claims against claims of the provider.

2. Amendments, supplements and additional agreements must be made in writing. The same applies to amendments and/or supplements to the written form requirement itself.

3. Should any provision in the contract be or become legally invalid, the contractual partner and the provider shall agree that this does not affect the validity of the remaining provisions.

4. Leipzig shall be the place of jurisdiction for all present and future claims arising from the business relationship with registered merchants, including claims arising from bills of exchange and checks.
The same place of jurisdiction shall apply if the contractual partner does not have a general place of jurisdiction in Germany, relocates its domicile or habitual residence outside Germany after the contract was concluded or its domicile or habitual residence is not known at the time the action is commenced.

5. The law of the Federal Republic of Germany shall apply, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG). The application of the Uniform Law on the International Sale of Goods and the Law on the Formation of Contracts for the International Sale of Goods (UN Sales Convention) on movable goods shall be excluded.

6. In the event of any discrepancies or disputes, the German version of these General Terms and Conditions shall prevail.

Glossary

1st level support	Services for handling requests by the end customer regarding the products proGOV Suite and proDESK Suite installed in its company
2nd level support	Services for handling requests by the partner's support staff to procilon's support staff, related to the products proGOV Suite and proDESK Suite installed at the end customers of the partner
Client	Computer within a network that is not a server
Data exchange	Sending and/or receiving electronic messages and data in compliance with applicable legal requirements for electronic data interchange
Decompile	Backtranslation of the program code
Digital signature	Electronically generated signature to declare intent or confirm electronic documents; different levels of security: simple, advanced, qualified electronic signature
E-mail user	PC user who receives and/or sends electronic messages
ERP	Enterprise Resource Planning, used as an example of third-party software
Fix pack	Is provided as required as part of the software maintenance service and contains customer-specific corrections of errors
Help desk call	Assistance by telephone by procilon support staff to partners and end customers
Lead	End customer named by the partner. Such customer has shown interest in the products proGOV Suite/proDESK Suite.
Lead protection	Procilon grants partners lead protection with regard to an end customer. That means, only the named partner can sell proGOV licenses to the end customer within 6 months from reporting the lead to procilon.
List price	According to product price list – to be requested from procilon
Original version	Installed procilon product without non-procilon add-ons
Partner web	Protected area on the procilon website containing special information for procilon partners
procilon partner	Business partners of procilon, which, depending on their individual partner status, are authorized to offer and/or sell procilon products (proGOV Suite, proDESK Suite, proNEXT Suite)
proGOV Suite	Server-based procilon product line that ensures secure data transfer at a central location. Software product line developed in-house by procilon for use on server computers to provide digital signatures in computer networks. This software product line consists of various products and add-ons (modules).
Reaction time	Time span from the receipt of an error message (by e-mail, phone or fax) to the beginning of the error analysis
Server	Host system that provides services in a network
Support	Consulting services with regard to problems and questions concerning installed procilon products
Support services	Fee-based consulting services with regard to problems and questions concerning installed procilon products
Tip - Lead	Lead - named by the partner as an interested party in procilon products. The partner receives a lead commission when the project deal is completed. The project deal is handled by procilon.
Update service	Delivery of the latest software version for the delivered procilon product
Virtual mailroom	Software solution to provide centralized services regarding encryption and digital signature of electronic messages. Takes care of receiving, distributing, and sending messages by means of electronic mailboxes