

## **PROSTEP**

### **OpenDESC.com Terms and Conditions**

#### **§ 1 Subject matter**

1.

The subject matter of this Agreement is the rendering of services in connection with the PROSTEP OpenDESC.com portal. CAD data translation and the data transfer via OFTP are among the services offered by PROSTEP. These services can be used by Customer through a Service Agreement and an Amendment to the Service Agreement if applicable. The rendered services are – unless otherwise defined below – described in the attachments

- Data Transfer
- Data Translation.

2.

PROSTEP reserves the right to change the OpenDESC.com Terms and Conditions and attachments by giving 60 days notice. The new terms and conditions will be published in the OpenDESC.com portal. Customer may terminate this Agreement for cause within 30 days after receipt of the new Terms and Conditions, to take effect at the end of the next calendar quarter. If Customer does not terminate, the new Terms and Conditions shall apply starting from the date set forth in the notice. If Customer terminates the Agreement, PROSTEP will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

#### **§ 2 Services to be rendered by PROSTEP**

The services rendered by PROSTEP are described in the attachments

- Data Transfer
- Data Translation

#### **§ 3 Duties of the Customer**

The duties of the Customer are described in the attachments

- Data Transfer
- Data Translation

#### **§ 4 Customer's Obligation to co-operate**

At any time Customer is obligated to co-operate and shall provide PROSTEP with any necessary information (e.g. required partner data for the data transfer service) for the performance of the contractual services in a timely manner. If Customer does not meet the obligation to co-operate in orderly, proper form or a timely manner, PROSTEP may invoice any additional costs or efforts resulting here from at the effective rates.

#### **§ 5 Acceptance**

The acceptance process on part of the Customer is described in the attachments

- Data Transfer
- Data Translation

## **§ 6 Service Times**

1.

The PROSTEP OpenDESC.com Service with the automated data transfer process is available 24 hours 7 days a week. However a 100 % availability cannot be guaranteed due to the different systems involved (among others on the customer's or recipient's side or the network providers).

2.

PROSTEP shall receive error reports from Customer by E-mail or telephone during the following business hours:

Monday – Thursday 9:00 a.m. through 5:00 p.m. and Friday 9:00 a.m. through 4:00 p.m. with the exception of national and local public holidays at the place of PROSTEP's principal office. Outside these business hours error reports can be reported via voice message or by E-Mail.

## **§ 7. Remuneration and Payment**

1.

The Customer shall apply for registration stating his relevant data. The registration is subject to a registration fee according to the then effective price list.

2.

The charge rates for services delivered under this Agreement are listed in the price list which is effective at the moment of delivery and will be invoiced on a monthly basis. An annual fee becomes due in the first month. Individual service orders shall be invoiced upon completion of the services on a monthly basis. In case of Standard Framework Agreements Customer agrees to order a certain volume during a defined period of time. Invoicing shall be on a monthly basis for the preceding month and is based upon the remuneration agreed upon in the Framework Agreement, in accordance with the then current price list. The remuneration fixed in the Standard Framework Agreement is based on the assumption that Customer will use the entire volume to which Customer has committed himself to. In the event that Customer falls short of using the agreed volume by more than 10 %, PROSTEP has the right to claim an additional charge in the amount of the balance between the remuneration set forth in the Framework Agreement and the remuneration due according to the effective price list for the actually used services.

3.

To the extent that the parties agree on volume-based invoicing, invoices will be issued based on file type (single file, assembly or drawing sheet) and file size (in MByte) subject to the following conditions. The volume will be counted in the uncompressed format of the originating CAD system for each model / file; any portion of a MByte will count as a full MByte. The PROSTEP system environment will be used for counting purposes. Customer will be invoiced for the volume of actually converted data (in Mbyte) for each translation job whereas the amount of MByte counted may differ from the amount of MByte provided by Customer (e.g. in case of multiple usage of repetitive parts in assemblies). PROSTEP will invoice Customer for services that are not volume-based (e.g., customer specific adaptation) on a time and materials basis, according to the then effective price list or specific provisions in the Framework Agreement.

4.

Customer will be invoiced on a monthly basis. Invoices shall be due for payment within fourteen (14) days after their receipt with no deduction. The compensation is subject to the statutory value added tax valid at that time. If Customer is in default with its payments, and customer does not remit payment within the time limit set in a first reminder, PROSTEP may stop the further accomplishment of the contractual services and may block the account.

If the Customer remits payment within three months after blocking, the account may be reopened against a reactivation fee listed in the price list effective at that time. Once the account is reactivated existing partner connections remain in use. If the customer does not remit payment within three months after blocking a reactivation is no longer possible and the account as well as all related partner connections will be permanently deleted.

Customer shall not offset claims, unless its counter-claims are undisputed or have become res judicata. Customer shall assign claims against PROSTEP only with the prior agreement of PROSTEP.

## **§ 8 Default in Supplies and Services**

1.

PROSTEP is unable to meet the agreed dates, unless Customer complies with any and all of its obligation to cooperate (§ 4). In the event of modifications and enhancements and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which PROSTEP is not responsible (e.g., force majeure, labour unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

2.

In the context of the rendered services PROSTEP will transfer and convert the data by automated processes directly to the recipient or will make it available for data transfer. No contractual assurance can be made with regards to the transmission time, due to the systems involved on both sides, in particular with regards to the kind and quality of the connection - bandwidth of Internet connection, ENX bandwidth or availability of ISDN phone lines.

3.

If PROSTEP is in default, Customer shall initially grant a reasonable grace period in writing for the due rendering of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the Agreement upon expiration of the grace period set forth in writing, Customer shall announce this intention in the letter stipulating the grace period.

## **§ 9 Liability**

1.

PROSTEP shall be liable for any violation of contractual duties, regardless of the legal cause (e.g., fault in the execution of the contract, default, material defect and defect of title, violation of any other duty, or tort) provided, however:

- in case of intentional wrongdoing and in the absence of a guaranteed quality for the full amount;
- in case of gross negligence for the foreseeable and typical damages limited to EUR 50.000,-- and in case of a default due to ordinary negligence or in case of a breach of a cardinal contract obligation endangering the purpose of this Agreement for the foreseeable and typical damages limited to EUR 25.000,--.
- No other claims are permissible.

2.

PROSTEP is not liable for any data losses, in particular PROSTEP is not obliged to perform data back up processes.

## **§ 10 Access by Third Parties**

1.

In order to prevent misuse of the openDESC.com services the parties have to ensure, that passwords or other access identifications are carefully distributed, saved and kept confidential. In case of unauthorized access of a third party to the OpenDESC.com portal by using access data of the Customer, the Customer shall indemnify PROSTEP from all claims including third party claims.

If PROSTEP suspects a misuse of passwords it will immediately inform the Customer. It is strongly recommended to change passwords regularly and it can be done anytime at no extra charge.

2.

Assignment or transfer of any openDESC.com services to third parties is not permitted without prior written consent.

**§ 11 Confidentiality and data protection**

1.

The parties agree to treat any information, records, and data that are disclosed to them in the course of the performance of this Agreement as confidential and to deny any third party access, except for the purpose of this Agreement. Customer shall take the appropriate measures to ensure that unauthorized third parties have no access to the openDESC.com services, or to any other PROSTEP materials. The parties shall notify their employees of their duty of confidentiality.

2.

PROSTEP and Customer will comply with the data protection rules and regulations. PROSTEP will process Customer's data electronically and comply with data protection rules and regulations. However, Customer is responsible for securing personal data prior to the commencement of the contractual services in such a manner that no unintended (not required for the performance of this Agreement) access of PROSTEP is possible. In general, Customer shall be responsible for obtaining the authorizations from its employees, customers, and business associates of Customer and any other affected individuals that may be required under the data protection law.

Customer shall indemnify and hold PROSTEP harmless from and against any claims that the aforementioned persons may assert against PROSTEP for non-compliance with these duties. This includes also the on site data access or via remote data transmission.

3.

Sole responsibility for the content of the transferred data is with the Customer. Customer is also responsible for complying with legal requirements and copyright limitations. PROSTEP has no influence over this issue. Transfer or distribution of condemnable content by using PROSTEP Services is strictly prohibited.

In the context of rendering the services PROSTEP is under no obligation to perform random checks or inspections. If PROSTEP becomes aware of any type of infringement, PROSTEP is entitled to terminate the rendering of services for the Customer immediately.

4.

The duty of confidentiality shall survive for five (5) years after the termination of this Agreement.

**§ 12 Term and Termination**

1.

This Agreement is made for an indefinite time. This Agreement may be terminated by each party by giving three (3) months notice to take effect at the end of the Agreement year.

2.

The parties reserve the right to terminate any Agreement for cause. The non-defaulting party shall notify the defaulting party in writing of its intention to terminate this Agreement. The notice shall specify the reason for termination, and set forth a reasonable period in which the default is to be cured. Cause for termination shall exist, but is not limited to the following events:

- default or absence of services to be rendered and a granted grace period set for in writing has expired without remedy.
- if Customer is in default with its payments for more that 4 weeks;
- breach of his obligation to co-operate by customer
- the threat of instituting or the institution of insolvency proceedings against the assets of either party, or if their institution is declined for lack of assets.

3.

Any termination notice must be in writing to be effective.

**§ 13 Venue and Governing Law; final clause**

1.

Place of performance is the principal office of PROSTEP. The exclusive venue for all disputes arising from or in connection with this Agreement shall be at the city of the principal office of PROSTEP, if Customer is a merchant of trade or a legal entity, or a special fund under German public law or holds no inland place. This Agreement shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

2.

If individual provisions of this Agreement are or become ineffective or in case the Agreement is incomplete, the effectiveness of the remaining provisions shall not be affected. If one of the cases stated above appears, the contractual partners shall attempt to resolve or amend these topics in a mutual consent, which will accomplish the intended commercial intention as close as possible in a legally allowed manner. The same paragraph shall apply to any omissions.

3.

In case of discrepancies or interpretation difficulties the German version of the Agreement shall prevail.