

# Proact IT Group AB

## Terms and Conditions of Purchase of Goods and Services

V 2.2

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**THESE TERMS AND CONDITIONS**, together with any additional terms specifically agreed and set out in the Contract set out the basis on which the Supplier shall supply goods and services to Proact.

## GENERAL TERMS

### 1. INTERPRETATION

Definitions.

1.1 In these Terms and Conditions, the following definitions apply:

Term	Definition
<b>Confidential Information</b>	(i) the existence and terms of the Contract; (ii) any information that would be regarded as confidential by a reasonable business person relating to: the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (iii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); or (iv) any information developed by the parties in the course of carrying out the Contract; in each case other than information which: (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of the Contract); (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party; (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; (d) the parties agree in writing is not confidential or may be disclosed; or (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party
<b>Contract</b>	an agreement for the provision of goods and/or services by the Supplier to Proact and which refers to or otherwise incorporates these Terms and Conditions
<b>Data Controller</b>	as defined in Article 4(7) of the GDPR
<b>Data Processor</b>	as defined in Article 4(8) of the GDPR
<b>Data Protection Law</b>	any applicable laws relating to the protection of Personal Data from time to time including the GDPR
<b>Data Subject</b>	as defined in Article 4(1) GDPR
<b>Data Subject Request</b>	any formal request to exercise a right prescribed by Data Protection Law
<b>GDPR</b>	Regulation (EU) 2016/679
<b>Intellectual Property Rights</b>	patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registerable or not, in any part of the world
<b>Material Change</b>	something which causes or may be likely to cause a material change, in the reasonable opinion of Proact, to the Supplier's business including (but not limited to): (i) a change of control of the Supplier company; (ii) a change to the Supplier's compliance standards (including but not limited to ISO27001) as at the date of this agreement; or (iii) any regulatory breach (including breach of any Data Protection Law and/or applicable compliance certifications
<b>Personal Data</b>	any Proact Data which is personal data as defined in Article 4(1) GDPR
<b>Personal Data Breach</b>	as defined in Article 4(12) GDPR

<b>Proact</b>	the subsidiary legal entity of the Proact Group which is set out in the Contract and to which the goods and/or services are provided by the Supplier
<b>Proact Data</b>	Information or data provided by or made available by Proact for processing by the Supplier under the terms of the Contract
<b>Proact Group</b>	Proact IT Group AB (Publ) (org no: 556494-3446) a publicly listed corporation incorporated in accordance with the laws of Sweden and with its principal place of business at Kistagången 2, Box 1205, SE-164 28, Kista, Sweden
<b>Supervisory Authority</b>	any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Law
<b>Supplier</b>	the person or organisation who provides the goods and/or services to Proact under the Contract

- 1.2 Clause and section headings shall not affect the interpretation of these Terms and Conditions.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5 A reference to a provision of law is a reference to it as amended extended or re-enacted from time to time and shall include all subordinate law or regulations made thereunder from time to time.
- 1.6 A reference to applicable law shall refer only to mandatory provisions of law.
- 1.7 A reference to writing or written includes fax and email.
- 1.8 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.9 References to clauses are to the clauses of these Terms and Conditions.
- 1.10 Any reference to these Terms and Conditions or to any other agreement or document referred to in these Terms and Conditions is a reference to these Terms and Conditions or such other agreement or document as varied in accordance with the provisions of these Terms and Conditions from time to time.
- 1.11 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

## **2. BASIS OF CONTRACT**

- 2.1 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing and the Supplier hereby specifically confirms that any standard terms which are referred to on the Supplier's quotation or in an order acknowledgement but which have not been specifically agreed to in writing by Proact shall not apply to the Contract.
- 2.2 An order submitted by Proact to the Supplier constitutes an offer by Proact to purchase goods and/or services in accordance with these Terms and Conditions.
- 2.3 An order shall be deemed to be accepted on the earlier of:
  - 2.3.1 the Supplier issuing a written acceptance of an order; and
  - 2.3.2 the Supplier doing any act consistent with fulfilling the order, at which point the Contract shall come into existence.
- 2.4 The Contract shall continue, unless terminated earlier in accordance with clause 11, for the term as set out in the Contract.
- 2.5 In the event that there is no specified term, the Contract shall continue until the first anniversary of the date of the Contract when it shall terminate automatically without

notice. For the avoidance of doubt, under no circumstances shall the term of the Contract automatically renew.

2.6 In the event and to the extent only of any conflict or inconsistency between the provisions of:

2.6.1 the clauses of these Terms and Conditions;

2.6.2 the body of the Contract; or

2.6.3 any other document specifically referred to in the Contract; then

the order of precedence shall be as set out in this clause 2.6 with 2.6.1 having the highest priority provided that where any clause in the Contract is expressly stated to have priority over another specifically referenced provision then that clause in the Contract shall take precedence.

### **3. OBLIGATIONS**

3.1 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.2 Proact shall:

3.2.1 co-operate with the Supplier in all matters relating to the Contract;

3.2.2 provide such access to Proact's premises, Proact Data, and such office accommodation and other facilities, as may reasonably be required by the Supplier and agreed by Proact in advance for the purposes of carrying out its obligations under the Contract; and

3.2.3 provide, in a timely manner, such information as the Supplier may request, and that Proact considers reasonably necessary, in order to carry out its obligations under the Contract and ensure that all information Proact provides is accurate in all material respects.

### **4. CHARGES AND PAYMENT**

4.1 The price of the goods and/or services shall be the price set out in the Contract, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.

4.2 Where the services are provided on a time-and-materials basis:

4.2.1 the charges payable for the services shall be calculated in accordance with the Supplier's standard daily fee rates in force for the supply of the services, details of which are set out in the Contract;

4.2.2 the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day during normal business hours;

4.2.3 the Supplier shall not be entitled to charge on a pro-rata basis for part-days worked by the Supplier's personnel unless it has Proact's prior written consent to do so;

4.2.4 the Supplier shall invoice Proact monthly in arrears for its charges for the month concerned, calculated as provided in this clause 4. Each invoice shall set out the time spent by each of the Supplier's personnel and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

4.3 Where the services are provided for a fixed price, the total price for the services shall be the amount set out in the Contract and the Supplier shall invoice Proact for the charges payable, together with expenses and the costs of materials (and any applicable tax, levy, impost, duty, charge or fee, where appropriate), calculated as provided in this clause 4.

4.4 The price of the goods and/or services is exclusive of amounts in respect of any applicable tax, levy, impost, duty, charge or fee, but includes the costs of any packaging, insurance and carriage of the goods.

4.5 No extra charges or expenses shall be effective unless reasonably incurred and agreed in writing and signed by Proact.

4.6 The Supplier may invoice Proact for the goods and/or services on or at any time after the completion of services, or delivery of goods.

4.7 Proact shall pay correctly rendered invoices within 30 days of the end of the month in which it receives the invoice. Payment shall be made to the bank account nominated in writing to Proact by the Supplier.

- 4.8 Proact shall not under any circumstances be liable to the Supplier for any restocking fees.
- 4.9 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above the Euro Interbank Offered Rate (Euribor) 12 month lending rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.
- 4.10 Proact may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Proact against any liability of Proact to the Supplier, whether such liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Terms and Conditions.

## **5. INTELLECTUAL PROPERTY**

- 5.1 All materials, equipment, tools, copyright, rights in designs and any other Intellectual Property Rights in all drawings, specifications and data supplied by Proact to the Supplier shall at all times be and remain the exclusive property of Proact, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to Proact, and shall not be disposed of or used other than in accordance with Proact's written instructions or authorisation.
- 5.2 Intellectual Property Rights owned by either party prior to entering into the Contract shall not be transferred and shall remain in the ownership of the original party.
- 5.3 New Intellectual Property Rights arising out of or in connection with the services shall be owned by Proact and the Supplier hereby assigns to Proact, with full ownership and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the services.
- 5.4 The Supplier shall, promptly at Proact's request, do or procure to be done all such further acts and things and the execution of all such other documents as Proact may from time to time require for the purpose of securing for Proact the full benefit of these Terms and Conditions, including all right, ownership and interest in and to the Intellectual Property Rights and all other rights assigned to Proact in accordance with clause 5.2 or clause 11.3.

## **6. INDEMNITY**

- 6.1 The Supplier shall keep Proact indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Proact as a result of or in connection with:
- 6.1.1 any claim made against Proact for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the supply or use of the goods and/or services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 6.1.2 any claim made against Proact by a third party for death, personal injury or damage to property arising out of or in connection with defects in goods, to the extent that the defects in the goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- 6.1.3 any claim made against Proact by a third party arising out of or in connection with the supply of the goods and/or services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 6.1.4 Any claim made against Proact by a third party arising out of or in connection with the Supplier's processing of Personal Data in breach of clause 9 or arising out of any Personal Data Breach.
- 6.2 This clause 6 shall survive termination of the Contract.

## 7. INSURANCE

During the term of the Contract and for a period of 6 years thereafter, the Supplier shall carry and maintain adequate insurances consistent with generally accepted industry standards with a reputable insurance company to cover its obligations and liability under the Contract (such policies to include but not be limited to public liability and professional indemnity insurance) and shall provide Proact with such evidence relating to such insurances as Proact may reasonably request from time to time.

## 8. CONFIDENTIALITY

8.1 Neither party shall for the duration of the Contract and for a period of five years thereafter:

8.1.1 use any Confidential Information except for the purpose of exercising or performing its rights and obligations under the Contract; or

8.1.2 disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 8.

8.2 Each party may disclose the other party's Confidential Information:

8.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with the terms of this clause 13; and

8.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority including pursuant to the rules of any regulated stock exchange to which either party is subject.

8.3 This clause 8 shall survive termination of the Contract for any reason.

## 9. PERSONAL DATA PROCESSING

The Supplier shall:

9.1 comply with Data Protection Law;

9.2 process Personal Data for and on behalf of Proact for the purposes of performing its obligations under the Contract, and only in accordance with these Terms and Conditions and any written instructions from Proact;

9.3 notify Proact within 24 hours of becoming aware if it considers, in its opinion (acting reasonably) that it is required by law to act other than in accordance with the instructions of Proact, including where it believes that any of Proact's instructions under clause 9.2 infringes Data Protection Law;

9.4 implement and maintain appropriate technical and organisational security measures which are sufficient to comply with at least the obligations imposed on the Supplier by Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR) as applicable;

9.5 ensure that any persons engaged or employed from time to time by the Supplier in connection with the Contract including employees, consultants, contractors and permitted agents of such persons who shall have access to the Personal Data shall comply with the obligations imposed on the Supplier under the Contract and shall enter into a confidentiality agreement which shall ensure no less than the equivalent degree of care that the Supplier applies to its own proprietary or secret information (and which shall in no case be less than a reasonable standard of care for the industry concerned) shall be applied to the Personal Data;

9.6 not disclose Personal Data to a third party or appoint a third party processor without the prior written consent of Proact;

9.7 not transfer the Personal Data to, and/or access the Personal Data from, and/or process the Personal Data within a jurisdiction or territory that is outside of the European Economic Area without the prior written consent of Proact;

9.8 notify Proact promptly (and in any event within 48 hours) following its receipt of any Data Subject Request or formal request from a Supervisory Authority relating to the Personal Data and shall:

- 9.8.1 not disclose any Personal Data in response to any Data Subject Request or formal request from a Supervisory Authority (except as required by Data Protection Law) without Proact 's prior written consent; and
- 9.8.2 provide Proact with all reasonable co-operation and assistance required by Proact in relation to any such Data Subject Request or responding to formal requests from a Supervisory Authority;
- 9.9 notify Proact promptly (and in any event within 24 hours of becoming aware of any actual or suspected, threatened or attempted Personal Data Breach and immediately:
  - 9.9.1 take all steps reasonably required to mitigate the possible adverse effects of such breach; and
  - 9.9.2 assist Proact to make any notifications to the Supervisory Authority and affected Data Subjects including by providing the following information without undue delay (such information may be provided in stages):
    - 9.9.2.1 the nature of the Personal Data Breach incident including the categories of Data Subject and number of Personal Data records concerned;
    - 9.9.2.2 the name and contact details of the individual coordinating the Personal Data Breach response;
    - 9.9.2.3 a description of the likely consequences of the Personal Data Breach;
    - 9.9.2.4 a description of the measures taken or proposed to be taken to mitigate the possible adverse effects of the Personal Data Breach.
- 9.10 upon becoming aware of any Personal Data Breach or attempted Personal Data Breach the Supplier must promptly and in consultation with Proact take all reasonable steps necessary to make such changes to the technical and organisational security measures to prevent any further or future breach.
- 9.11 comply with Data Protection Law and not do anything or refrain from doing anything that will cause Proact not to comply with Data Protection Law.
- 9.12 assist Proact in preparing any data protection impact assessments (as required by Article 35 of the GDPR) and, where required by Data Protection Law, consulting with the Supervisory Authority in respect of any such data protection impact assessments).
- 9.13 maintain complete and accurate records and information to demonstrate its compliance with the Contract, these Terms and Conditions and Data Protection Law and upon request by Proact make such records and information as may be required to demonstrate such compliance available to Proact or any third party assigned by Proact for this purpose.
- 9.14 This clause 9 shall continue in full force and effect for so long as the Supplier processes the Personal Data.

## **10. LIMITATION OF LIABILITY**

- 10.1 Nothing in these Terms and Conditions excludes or limits the liability of either party for:
  - 10.1.1 death or personal injury caused by the either party's negligence;
  - 10.1.2 fraud or fraudulent misrepresentation; or
  - 10.1.3 any other liability which cannot lawfully be excluded or limited.
- 10.2 Subject to clause 10.1 Proact's total aggregate liability arising under or in connection with the Contract shall be limited to the amount paid by Proact to the Supplier under the Contract during the 12 months preceding the date on which the liability arose.

## **11. TERMINATION**

- 11.1 Notwithstanding clause 2.4 of these Terms and Conditions Proact may terminate the Contract in whole or in part at any time before delivery of the goods and/or performance services with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Proact shall pay the Supplier fair and reasonable compensation for any work in progress on the

- goods and/or services at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 11.2 Without limiting its other rights or remedies, Proact may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier:
- 11.2.1 fails to make a notification under clauses 15.7 and/or 18.3.2;
  - 11.2.2 commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of being notified in writing to do so by Proact;
  - 11.2.3 is insolvent or takes any step or action in connection with its entering any form of insolvency protection, administration, liquidation or any other composition or arrangement with its creditors; or
  - 11.2.4 suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 11.3 On termination of the Contract for any reason, the Supplier shall immediately deliver to Proact all copies of Proact Data. The Supplier shall certify to Proact that it has not retained any copies of Proact Data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 8.
- 11.4 On termination of the Contract by Proact, the Supplier shall immediately deliver to Proact all specifications, programs (including source code) and other documentation comprised in the services and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to and vest in Proact (to the extent that they have not already done so by virtue of clause 5), who shall be entitled to enter the premises of the Supplier to take possession of them.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.
- 11.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **12. REMEDIES**

- 12.1 If the goods are not delivered on the Delivery Date or do not comply with the undertakings set out in clause 4.1, or any of the services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract then, without limiting any of its other rights or remedies, Proact shall have the right to any one or more of the following remedies, whether or not it has accepted the goods or services:
- 12.1.1 to terminate the Contract;
  - 12.1.2 to reject the goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
  - 12.1.3 to require the Supplier to repair or replace the rejected goods, or to provide a full refund of the price of the rejected goods (if paid);
  - 12.1.4 to refuse to accept any subsequent delivery of goods or provision of any further services the Supplier attempts to make and to require the immediate repayment by the Supplier of all sums previously paid by Proact to the Supplier under the Contract;
  - 12.1.5 to recover from the Supplier any costs incurred by Proact in obtaining substitute goods and/or services from a third party;
  - 12.1.6 to require the Supplier, without charge to Proact, to carry out such additional work as is necessary to correct the Supplier's failure; or
  - 12.1.7 to claim damages for any other costs, loss or expenses incurred by Proact which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract not otherwise covered by the foregoing provisions of this clause 12.
- 12.2 These Terms and Conditions shall apply to any repaired or replacement goods or services supplied by the Supplier.
- 12.3 Proact's rights and remedies under these Terms and Conditions are in addition to its rights and remedies implied by statute and common law.

## **13. ANTI-BRIBERY**

- 13.1 The Supplier shall:

- 13.1.1 comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - 13.1.2 comply with Proact's Code of Conduct and applicable policies and procedures which Proact may update from time to time, and which are available upon request;
  - 13.1.3 have and shall maintain in place throughout the term of the Contract its own policies and procedures and will enforce them where appropriate;
  - 13.1.4 promptly report to Proact any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
  - 13.1.5 immediately notify Proact (in writing) if a foreign public official becomes an officer or employee of the Supplier and/or acquires a direct or indirect interest in the Supplier (and the Supplier warrants that it has no foreign public officials as officers or employees and/or direct or indirect owners at the date of the Contract);
- 13.2 The Supplier shall ensure that any person associated with the Supplier who is performing services and/or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 16. The Supplier shall be responsible for the observance and performance by such persons of the provisions of this clause, and shall be directly liable to Proact for any breach by such persons of any of the provisions howsoever arising.
- 13.3 Breach of this clause shall be deemed a breach, which is not remedied within the specified period, under clause 11.2.1.

## **14. GENERAL**

- 14.1 Notices:
- 14.1.1 Any notice required to be given in writing to a party under or in connection with the Contract shall be given in writing which shall (on the part of Proact) include notification by way of email to legal@proact.eu.
  - 14.1.2 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 14.2 Assignment and subcontracting: Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the party (such consent not to be unreasonably withheld).
- 14.3 Third parties: A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.4 Force majeure: Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate this Contract by giving 7 days' written notice to the affected party.
- 14.5 Waiver and cumulative remedies: A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.6 Variation. Except as set out in these Terms and Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Proact.
- 14.7 Execution Formalities: The Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but

all the counterparts shall together constitute the one agreement. Transmission of an executed counterpart (but for the avoidance of doubt not just a signature page) by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery. The parties further agree that they may conduct business transactions using electronic documents and electronic signatures and that any agreement signed electronically using the Adobe EchoSign Service shall for all purposes be deemed to be validly executed by the party or parties so signing.

14.8 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

14.9 Law and Jurisdiction: The Contract shall be governed by and construed according to the law of the country of legal domicile of Proact. Proact and the Supplier accept the exclusive jurisdiction of the courts of the country in which Proact is legally domiciled.

If the Contract includes the supply of goods, the following provisions 15 to 17 inclusive will apply:

## 15. THE GOODS

15.1 The Supplier shall ensure that the goods:

15.1.1 conform with their description as set out in the Contract and any applicable specification;

15.1.2 be free from defects in design, material and workmanship and remain so for 12 months after delivery;

15.1.3 be fit for any purpose held out by the Supplier or made known to the Supplier by Proact expressly or by implication, and in this respect Proact relies on the Supplier's skill and judgement;

15.1.4 comply with all applicable legal requirements; and;

15.1.5 be authorised for re-sale and use within the European Economic Area and the Supplier undertakes to produce evidence in writing of such authorisation upon request by Proact.

15.2 The Supplier hereby grants to Proact without further charge the irrevocable right and licence to use any software and to assign such rights and use to its customers or to the Proact Group.

15.3 The Supplier warrants that at the time of installation, all software will be free from viruses, worms or anything else that would impair performance of the software as it might reasonably be expected to operate.

15.4 The Supplier will supply to Proact all user manuals, training and other documentation for the goods without any further charge in such form and quantity Proact may reasonably request.

15.5 Proact shall have the right to inspect and test the goods at any time before delivery.

15.6 If following such inspection or testing Proact considers that the goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 15.1, Proact shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

15.7 The Supplier shall notify Proact as soon as reasonably practical where a Material Change occurs or is likely to occur.

15.8 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Proact shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

## 16. DELIVERY

16.1 The Supplier shall ensure that:

16.1.1 the goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

- 16.1.2 each delivery of the goods is accompanied by a delivery note which shows the date of the order, the order number (if any), the type and quantity of the goods (including the code number of the goods, where applicable), special storage instructions (if any) and, if the goods are being delivered by instalments, the outstanding balance of goods remaining to be delivered; and
- 16.1.3 if the Supplier requires Proact to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 16.2 Delivery of the goods shall be completed on the completion of unloading the goods at the agreed delivery location.
- 16.3 The price for goods shall be as set out in the Contract. Unless otherwise specifically stated all charges quoted are Cost, Insurance and Freight (CIF) per Incoterms 2010 Rules.
- 16.4 The Supplier shall deliver the goods:
  - 16.4.1 on the date specified in the Contract, or, if no such date is specified, within 28 days of the Contract date;
  - 16.4.2 to the agreed delivery location; and
  - 16.4.3 during Proact's normal business hours, or as otherwise instructed by Proact.
- This clause 5.4 shall be a binding condition of the Contract.
- 16.5 The Supplier shall not deliver the goods in instalments without Proact's prior written consent. Where it is agreed that the goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Proact to the remedies set out in clause 12.
- 16.6 Where goods are supplied for export from the country in which the Supplier is located the Supplier shall be responsible for complying with any legislation governing the importation of the goods into the country of destination and shall be responsible for the payment of any duties which fall due as a result.

## 17. OWNERSHIP AND RISK

Ownership and risk in the goods shall pass to Proact on completion of delivery.

If the Contract includes the provision of services, the following provisions 18 and 19 will apply:

## 18. THE SERVICES

- 18.1 Any times specified for performance of the services shall be binding conditions of the Contract.
- 18.2 If the Supplier fails to perform the services within the time stipulated or to meet any performance dates in the Contract, Proact shall be entitled to:
  - 18.2.1 cancel the order in whole or in part without liability to the Supplier;
  - 18.2.2 refuse to accept any subsequent performance of the services which the Supplier attempts to make;
  - 18.2.3 purchase substitute services elsewhere;
  - 18.2.4 hold the Supplier accountable for any loss and additional costs incurred; and
  - 18.2.5 receive a refund from the Supplier of all sums previously paid by Proact to the Supplier for the order.
- 18.3 The Supplier shall:
  - 18.3.1 cooperate with Proact in all matters relating to the services including complying with Proact's reasonable security requirements where such requirements have been notified to the Supplier by Proact;
  - 18.3.2 notify Proact as soon as reasonably practical where a Material Change occurs or is likely to occur; and
  - 18.3.3 appoint a project manager, who shall have authority to commit the Supplier on all matters relating to the services.

- 18.4 Proact may, acting reasonably, decline to accept any persons (including replacements) proposed by the Supplier to carry out the services, and in such event the Supplier shall propose a replacement person without delay.
- 18.5 The Supplier acknowledges and agrees that:
- 18.5.1 any specification agreed between the parties is accurate and complete in all material respects, and is not misleading; and
  - 18.5.2 if it considers that Proact is not or may not be complying with any of its responsibilities under these Terms and Conditions, it shall only be entitled to rely on this as relieving performance:
    - 18.5.2.1 to the extent that it restricts or prevents performance of the services by the Supplier; and
    - 18.5.2.2 if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to Proact in writing.
- 19. QUALITY OF SERVICES**
- 19.1 The Supplier warrants to Proact that:
- 19.1.1 the Supplier will perform the services with reasonable care and skill and in accordance with generally recognised commercial practices and standards;
  - 19.1.2 the services will conform with all descriptions and specifications provided to Proact by the Supplier, and/or agreed between the parties; and
  - 19.1.3 the services will be provided in accordance and the Supplier will comply with all applicable legislation from time to time in force.
- 19.2 The provisions of this clause 19. shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by the Supplier.

## COUNTRY SPECIFIC PROVISIONS

### 20. COUNTRY SPECIFIC PROVISIONS

The following provisions of these Terms and Conditions shall have effect only if the Supplier or Proact (as applicable) is legally domiciled in the country set out in the provision. To the extent only of any contradiction between the provisions in clauses 1 to 19 and the following clauses, the following clauses shall have priority.

- 20.1 If Proact is legally domiciled in the **Czech Republic** the following provisions shall apply:
- 20.1.1 The parties agree to exclude the applicability of the following sections of the Act. Np. 89/2012 Coll., the Civil Code: section 1751 para. 2 (knock-out rule for battle of forms rather than no contract), sections 1765 and 1766 (so that both parties shall bear the risk of change in circumstances and none of them is entitled to invoke potential change of circumstances, 1799 and 1800 (rules applicable for boilerplate contracts), 1919 -1925 (liability for defects) and 2002 (withdrawal from a contract in case of a material breach).
- 20.2 If Proact is legally domiciled in **Belgium** the following provisions shall apply:
- 20.2.1 One original copy of the contract shall be executed for each party to the contract in accordance with Belgium law governing the execution of contracts.