

Terms and Conditions

For Commercial and Professional Use

01-JAN-2023, version 1.30

Article 1 - Applicability of the Terms and Conditions

1. The provisions of these Terms and Conditions apply to all legal relationships and/or (other) agreements between ProSim and the Customer for acquiring a License Agreement for the benefit of the Licensee.
2. The provisions of the EULA apply to all legal relationships and/or (other) agreements between ProSim and the Licensee for the use of the Products. The provisions also apply to all legal relationships and/or (other) agreements between ProSim and the Customer if and insofar the subject matter is not or not sufficiently covered by the Terms and Conditions. In the event that any provision of the Terms and Conditions is in conflict with the EULA, the provision contained in these Terms and Conditions prevail.
3. Deviations from and additions to Terms and Conditions shall only be valid if they are agreed upon with ProSim in writing.
4. The applicability of any (general) purchasing or other conditions of Customer are specifically excluded.
5. All offers and other communications are subject to confirmation by ProSim unless ProSim has indicated otherwise in writing.
6. If any provision of these Terms and Conditions is null and void or is voided, the other provisions of these Terms and Conditions shall remain fully in effect. ProSim and the Customer shall in such case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

Article 2 - Definitions

In these Terms and Conditions the following terms shall apply in the following meaning:

Customer: the person or legal entity that has concluded any agreement with ProSim, subject to the Terms and Conditions, for the delivery of a User Licence to use a Product, and possibly a Support Subscription for the benefit of the Licensee. The Customer may be a Partner, a Training Device Manufacturer or it may be the Licensee itself;

Customer Order Confirmation: the confirmation issued by ProSim after receipt and acceptance of the Order Intake Form;

Custom Price Arrangements: provisions and/or agreement on the price(s) due by Customer made in writing specifically for certain specified circumstances and/or for a specific Customer in deviation or addition of the Price List.

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Bank name: Rabobank
IBAN: NL03RABO0318920093
BIC: RABONL2U
VAT number: NL864113067B01

EULA: the End User Licence Agreement applicable to the Licensee;

Flight Simulation Device: the equipment with a specific and unique identifier such as the simulator serial number, as registered with ProSim, on which the Products may be installed and/or used by Licensee;

Licence Agreement: the agreement which comes into being after ProSim's issuance of a Customer Order Confirmation which assigns the User Licence to ProSim Products to a Customer / Licensee;

Licence Certificate: the document issued to the Licensee containing the type and details of the User Licence granted, the EULA, the registered Flight Simulation Device, the identity of the Licensee and other particulars of the Licence Agreement;

Licensee: the person or legal entity that is entitled to operate the Products in accordance with the applicable EULA and provided the Licensee is registered as such with ProSim. The Licensee may or may not be a Customer;

List Price: the price of a Product as stated on the Price List and applicable to a (potential) Licensee and basis for price calculation of certain User Licence options and the Support Subscription;

Order Intake Form: the form provided by ProSim for the benefit of notifying ProSim of a Customer Product order containing information about the requested User Licence, options and Support Subscription, the Licensee and the Flight Simulation Device and desired certification level. Returned forms shall include the relevant and valid EULA signed on every page by the prospective Licensee, and printed with the Licensee contact person name, signature and date on the last page;

Price List: statement of List Prices per Product and as regularly (at least for each calendar year) updated by ProSim;

Product(s): any (software) products licensable and/or services offered or delivered by ProSim to Licensee or through a Customer to a Licensee;

ProSim: the company ProSim Training Solutions B.V.;

Support Subscription: the paid subscription which comes into being together with the Licence Agreement, under which Licensee is granted the right to use updated versions of the Products, navigational data (depending on the User Licence type and class) and support services that are provided by ProSim under the agreed provisions, after the first year the Support Subscription is subject to an annual tacit renewal and may be terminated in writing at least one month before each renewal;

Terms and Conditions: the Terms and Conditions of ProSim applicable to any agreement with the Customer;

Training Device Manufacturer: a (TDM) manufacturer and/or supplier of a flight simulation device;

User(s): person(s) acting under or that are deemed to be acting under the responsibility of Licensee in the broadest sense of the word, bound by the EULA and without prejudice to the user's own responsibility;

User Licence: the right to use a specific Product assigned by a Licence Agreement under the conditions as set out by the EULA.

Article 3 - Price and payment

1. All prices are exclusive of Value Added Tax (VAT, sales tax) and other levies imposed by any government. All prices stated by ProSim are in euros (EUR) and the Customer shall make all payments in euros.
2. Payment shall take place before delivery to Customer or Licensee, unless agreed otherwise.
3. List Prices are due unless otherwise agreed. Any Custom Price Arrangements are related to List Prices and are granted subject to timely payment of amounts due.
4. The parties may agree on payment by instalments but only and insofar as this has been agreed upon in writing. Instalments must be paid by the Customer in accordance with the agreed payment terms and may be subject to a surcharge.
5. If the Customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable or obligated towards ProSim for performance of the agreement.
6. Information from ProSim's records shall count as conclusive evidence with respect to the performance delivered by ProSim and the amounts owed by the Customer for delivery of this performance, without prejudice to the Customer's right to produce evidence to the contrary.
7. If a periodic payment obligation on the part of the Customer applies, ProSim shall always be entitled to adjust, in writing and with due observance of a term of at least three months, the applicable prices, rates and discounts. If the Customer does not agree to the adjustment in this latter case, the Customer shall be entitled to terminate the contract in writing within thirty days following notice of the adjustment, which termination shall take effect on the date on which the new prices and/or rates would take effect.
8. The parties shall record the date or dates on which ProSim shall charge the Customer for the performance agreed in the contract. Amounts owed must be paid by the Customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed.
9. If the Customer fails to pay amounts due or fails to do so on time, the Customer shall owe statutory interest for commercial contracts, as defined by the Government of the Netherlands, on the outstanding amount without a demand for payment or a notice of default being required. If the Customer fails to pay the amount due after a demand for payment or a notice of default has been issued, ProSim shall be entitled to refer the debt for collection, in which case the Customer must pay all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to ProSim's other legal and contractual rights.
10. Rights granted by ProSim to Customer and by ProSim to the Licensee are subject to timely payment.
11. ProSim is entitled to suspend any and all rights and any and all services provided to Licensee and Customer if payment for amounts due is not timely received by ProSim and after notification of default by ProSim with a maximum term of ten days.

12. If Customer is not the Licensee of the Products ProSim is at all times entitled to directly engage in a similar or additional agreement with the Licensee for the provision of (license) rights, Support Subscription and/or services, without any right for Customer for compensation in whatever form.

Article 4 – Way of Work, Cooperation and information

1. Any agreement between ProSim and Customer is concluded only by means of a Customer Order Confirmation provided to Customer and a Licence Certificate provided tot Licensee. For the conclusion of a Licence Agreement with a Customer/Licensee the Parties shall make use of the standard documents provided by ProSim, such as:
 - Order Intake Form
 - Customer Order Confirmation
 - Licence Certificate
 - the EULA (applicable to any and all agreements with a Licensee);
 - the Terms and Conditions (applicable to any and all agreements with the Customer);
 - Other documents designated by ProSim;
2. The Customer guarantees that the information it has provided or that has been provided on its behalf to ProSim is or are accurate and complete. If the information or specifications provided by the Customer contain inaccuracies apparent to ProSim, ProSim shall contact the Customer to make enquiries about the matter.

Article 5 - Acceptance

1. ProSim shall make the Products available to the Licensee via the internet. At ProSim's discretion, user documentation shall be made available in digital form.
2. The Licensee shall accept the Products in the state that it is in when delivered (“as is, where is”), therefore with all visible and invisible errors and defects. The Products shall be deemed to have been accepted by the Licensee upon delivery.
3. ProSim does not guarantee that the Products are suitable for actual use and/or the intended use other than explicitly granted or agreed. ProSim also does not guarantee that the Products will operate without interruption.
4. Except if provided for by law, the Licensee may not and is not entitled to change all or part of the Products without the prior written permission of ProSim. ProSim is entitled to refuse or to stipulate conditions for such permission. The Licensee shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with ProSim's permission.

Article 6 - Transfer of Personnel

1. During the term of the agreement and for one year following its termination or expiry, the Customer shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of ProSim who are involved in the performance of the agreement unless ProSim has given prior written permission. Conditions may be attached to this permission, including the condition that the Customer must pay compensation to ProSim.

Article 7 - Applicable law and disputes

1. This agreement and any further agreements between ProSim and Customer shall be governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
2. Any dispute that may arise on the basis of this agreement or as a result of further agreements between ProSim and Customer shall be resolved by the Court of Rotterdam (The Netherlands).

Article 8 – Obligations to comply with laws and other regulations

1. Customer agrees to comply with all applicable laws, federal, state and municipal statutes, ordinances, rules and regulations, including, without limitation, the rules and regulations under the U.S. Export Administration Act and the U.S. Foreign Corrupt Trade Practices Act, which may be subject to amendment from time to time.