

# Special Terms and Conditions for Agreements via IBM Digital Platforms

## I. Scope

1. These Special Terms and Conditions for Agreements via IBM Digital Platforms ("Special Terms and Conditions") apply between PROFI Engineering Systems AG, Otto-Röhm-Str. 18, 64293 Darmstadt, Germany ("PROFI AG", "we", "us", "our") and a company ("Customer") that concludes an agreement via an IBM Digital Platform with International Business Machines Corp. or one of its affiliated companies (each "IBM") for the provision of services by PROFI AG ("IBM Agreement").
2. Conflicting, deviating or supplementary general terms and conditions of Customer shall not apply unless PROFI AG has expressly consented to their application. This shall also apply even if the we did not expressly object to the application of the Customer's general terms and conditions.

## II. Intellectual property

1. In relation to PROFI AG, Customer retains all ownership rights to all of Customer's confidential information and Customer's intellectual property. Customer grants PROFI AG a non-exclusive, non-perpetual, worldwide, royalty-free, non-transferable license to use Customer's intellectual property to the extent necessary for PROFI AG to properly perform the services under the applicable IBM Agreement with Customer.
2. PROFI AG grants Customer a non-exclusive, perpetual, worldwide, transferable, sublicensable, irrevocable, royalty-free license to use the work results that PROFI AG develops for Customer under the applicable IBM Agreement with Customer.
3. Unless otherwise expressly stipulated in these Special Terms and Conditions or agreed, between us and our suppliers and Customer we retain all ownership rights to our registered trademarks, the associated documentation, all services or work results, as well as all intellectual property rights contained in or associated with the aforementioned elements. We reserve all rights, in particular rights of use under copyright law, which are not expressly licensed or granted.
4. If Customer provides PROFI AG with ideas, suggestions, improvement requests or recommendations (each, "Feedback") in connection with the performance of an IBM Agreement, Customer grants PROFI AG a royalty-free, fully paid, worldwide, transferable, sublicensable, irrevocable and perpetual license to implement, use, exploit, modify and/or integrate the Feedback into PROFI AG's products and other services and for other commercial use.

## III. Indemnification

Customer indemnifies PROFI AG against all third-party claims to the extent that PROFI AG (i) is held liable by a third party for infringement of the intellectual property rights of such third party due to the use of information, technology, data or materials that Customer has made available to PROFI AG for the performance of an IBM Agreement culpably misconceiving the rights of the third party and (ii) PROFI AG has used such information, technology, data or materials only for the performance of the IBM Agreement.

## IV. Warranty for defects and liability

1. Customer's warranty claims for defects in relation to PROFI AG's services under an IBM Agreement are governed exclusively by the provisions of that IBM Agreement. The same applies to damage compensation claims due to default or improper performance by PROFI AG and to damage compensation claims in lieu of performance ("Schadenersatz statt der Leistung") and claims for reimbursement of expenses in connection with the performance of an IBM Agreement.
2. Notwithstanding Section IV.1., PROFI AG is always liable without limitation (i) for death, personal injury or damage to health, insofar as this is due to a breach of an obligation by PROFI AG, a legal representative or vicarious agent of PROFI AG, (ii) for damage caused by the absence of a quality guaranteed by PROFI AG, (iii) for damage caused intentionally by PROFI AG or one of its legal representatives or vicarious agents and (iv), insofar as applicable, under the German Product Liability Act.
3. To the extent the relevant IBM Agreement is not applicable, PROFI AG shall be liable for damages caused with gross negligence without limitation. In the event of a breach of material contractual obligations caused with slight negligence, PROFI AG's liability in this case, except in the cases set out in Section IV.2., is limited to the foreseeable damage typical of for such contract and the limitation period for damage compensation claims against PROFI AG is one (1) year. Material contractual obligations are abstractly those obligations whose fulfillment is essential for the proper execution of a contract and on whose compliance the contracting parties may regularly rely on.

## V. Confidentiality

1. In connection with the performance of an IBM Agreement, either party (as the "Disclosing Party") might disclose or provide Confidential Information to the other party (as the "Receiving Party"). "Confidential Information" means, with respect to a Disclosing Party, all non-public confidential information relating to that party's business or services.
2. Confidential Information shall be designated and/or marked as confidential at the time of disclosure.

However, any information that the Receiving Party knew or reasonably should have known under the circumstances to be considered confidential or proprietary by the Disclosing Party shall be deemed to be Confidential Information of the Disclosing Party, even if not designated or marked as such. With respect to PROFI AG, Confidential Information includes, but is not limited to, methods and practices in the provision of services.

3. Confidential Information does not include information that: (i) was rightfully known to the Receiving Party, without restriction on use or disclosure, prior to such information being disclosed or made available to the Receiving Party in connection with the relevant IBM Agreement; (ii) was or becomes generally known to the public other than as a result of the Receiving Party's or any of its representatives' failure to comply with the relevant IBM Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party who was not or is not under an obligation of confidentiality at the time of receipt; (iv) was or is developed by the Receiving Party independently and without reference to or use of Confidential Information; or (v) if the Receiving Party is compelled by applicable law, court order or governmental regulation to disclose Confidential Information.
4. The Receiving Party will maintain the confidentiality of the Disclosing Party's Confidential Information and will treat such Confidential Information with at least the same degree of care that the Receiving Party uses to protect its own Confidential Information, but no less than a reasonable standard of care. The Receiving Party will use the Disclosing Party's Confidential Information only to exercise rights and fulfill obligations under the applicable IBM Agreement.
5. Confidential information of the Disclosing Party will be disclosed only to those employees and contractors of the Receiving Party who need to know such information in order to properly perform the relevant IBM Agreement.

## **VI. Miscellaneous**

1. Notices of termination and other declarations of intent must be made in writing. Any provisions, amendments or additions deviating from these Special Terms and Conditions must be agreed in writing.
2. Customer may only offset our claims against undisputed or legally established counterclaims. Customer is only authorized to exercise a right of retention insofar as Customer's counterclaim is based on the same contractual relationship.
3. All disputes between Customer and PROFI AG shall be governed by the laws of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. If Customer is based within the EU/EEA, Switzerland or the United Kingdom, the courts at the registered office of PROFI AG shall have exclusive jurisdiction to the extent permitted by law. If Customer is based in another country, all disputes between Customer and PROFI AG in connection with these Special Terms and Conditions shall be finally settled in accordance with the Arbitration Rules of the German Institution of Arbitration (DIS) without recourse to the ordinary courts of law. The arbitration tribunal shall be composed of a sole arbitrator. The seat of the arbitration shall be Frankfurt, Germany. The language of the arbitration proceedings shall be English.
5. PROFI AG processes Customer's personal data in accordance with the principles of REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of April 27, 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) and other relevant laws. For further information on data processing, please see our privacy policy, available at <https://www.profi-ag.de/datenschutz/> at any time.