

General Terms of Contract

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§ 1 Subject of contract

nPro Energy GmbH (hereinafter referred to as "provider") enables the temporary use of the software application "nPro" - accessible at <https://www.npro.energy> - via remote access by using an internet browser by way of the so-called Software-as-a-Service (SaaS). The provider shall provide the following services during the term of the contract:

- (1) The provider shall make the software application and its functions available to the customer for temporary use via remote access for the customer's own purposes.
- (2) The provider shall also provide the customer with the necessary server capacities for the storage and further processing of the data generated by the user with the software tool.
- (3) Further rights to the software application are not granted. In particular, the contractual partner shall not be entitled to reproduce, sell or transfer the software application for a limited period of time, in particular not to rent or lend it or to use it beyond the contractually agreed use of these terms and conditions or to make it accessible to third parties.

§ 2 Compensation

- (1) The agreed usage fees apply for the use of the software application. Each individual user license is linked to exactly one user account. The user accounts are to be created in the software application by the users themselves.
- (2) The annual usage fee is invoiced in advance. If the payment deadline is exceeded, access to the software application may be restricted in the event of default.

§ 3 Contract duration and termination

- (1) The minimum usage period of the software application is 1 year (unless otherwise agreed in the offer). **The contract expires automatically after the end of the usage period. Cancellation is not required.** The usage period can be extended by the customer for a further year any time.
- (2) The provider shall completely delete all stored data of the customer on its own server within 3 months after termination of the contractual relationship.

§ 4 Software availability (Service Level Agreement)

- (1) The software is generally available **24 hours a day, seven days a week**. The average availability during the main time is **99 % on an annual average**. The main time is - with the exception of national holidays - from Monday to Friday in the period from 8 a.m. to 6 p.m. Central European Time. The provider is not responsible for internet/network-related downtimes during which the software is unavailable due to technical or other problems beyond the provider's control.
- (2) If the contractually owed availability is not achieved for reasons for which the provider or its agents are responsible, the contractual partner shall be entitled to reduce the usage fee according to the proportion of the availability interruption.
- (3) The provider may update and extend the software application at any time without prior notice or consent of the customer.

§ 5 Cooperation duties and obligations of the customer

- (1) The contractual partner shall be responsible for the entry, maintenance and content of the data and information required to use the services offered. The contractual partner shall use state-of-the-art and regularly **updated virus protection programs** on the computer via which it uses the services and shall check the data and information generated by it for harmful codes, in particular for viruses, before transmission.
- (2) The **access data** of the contracting party may not be passed on to third parties and must be kept protected from access by third parties.

§ 6 Customer support

- (1) The provider shall provide the customer with customer service **by e-mail, telephone or video call** for the purpose of eliminating technical faults and rectifying errors that arise in the course of using the software. The provider will respond to support requests usually **within one business day**.
- (2) The provider shall provide training services after separate commissioning and against separate compensation. Programming effort for the production of special functionalities adapted to the wishes of the customer shall be charged individually according to effort at hourly rates to be agreed separately.

§ 7 Claims for defects

- (1) The provider shall take over the maintenance of the services including the associated software application.
- (2) Defects of the services offered shall be remedied by the provider within a reasonable period of time. A defect exists if the software does not have the contractually agreed quality. Insignificant deviations do not constitute a defect. Defects of the software application are only reproducible deviations from the specifications stipulated in the contract and in the user documentation.
- (3) Claims in accordance with § 536a BGB (German law), in particular those relating to no-fault guarantee liability and the right of self-execution, are excluded.

§ 8 Liability

- (1) The provider shall be liable for the violation of essential contractual obligations (so-called cardinal obligations). Insofar as the cardinal obligations were violated negligently, the customer's claim for damages shall be limited to the foreseeable damage typical for the contract, however, to a maximum amount of 10,000 €.
- (2) The provider shall not be liable for damages resulting from harmful code (virus infestation), hacker attacks, software errors or data loss.
- (3) The provider shall not be liable for lack of economic success, loss of profit, indirect damages, consequential damages and claims of third parties arising from the use of the software. A liability for the accuracy and completeness of the calculation methods and results is not provided.
- (4) The provider shall be liable in accordance with the statutory provisions under the provisions of the German Product Liability Act and for damages caused by injury to life, limb or health of the customer.
- (5) The customer is responsible for a regular backup of his data.
- (6) The limitations of liability according to the above clauses shall also apply to agents of the provider.

§ 9 Confidentiality and data protection

- (1) The parties are obligated to keep permanently secret all confidential information about the respective other party that has become known to them in connection with this contract, and not to disclose it to third parties, record it or use it in any other way, unless the respective other party has expressly consented in writing to its disclosure or use. These obligations shall also apply to the period after termination of the contractual relationship.
- (2) **Project-related data** entered by the user in the software **will be treated as strictly confidential** and in particular will not be accessible to third parties. Confidentiality applies in particular to all project-

- related data and other sensitive information. This obligation to confidentiality continues to apply even after termination of the contractual relationship.
- (3) The collection, processing and use of personal data shall be carried out only and on its own responsibility by the contractual partner as the responsible body within the meaning of the EU General Data Protection Regulation (GDPR) and other regulations on data protection, in particular the German Telemedia Act (TMG). The provider does not collect, process and use personal data from the contractual partners and their employees for its own purposes, but performs such tasks only as a service provider on behalf of the contractual partner in strict compliance with the latter's instructions within the meaning of Art. 28 GDPR.
 - (4) Upon conclusion of the contract, the customer grants the provider the right to publicly name the customer as a reference company for advertising purposes across all media, in particular on its website, and to use the customer's logo for this purpose. The customer may revoke this permission at any time.

§ 10 Changes to the terms of contract, service descriptions and prices

- (1) The service descriptions may be amended if this is necessary for good cause, the contractual partner is not objectively placed in a worse position compared to the service description included at the time of conclusion of the contract (e.g. retention or improvement of functionalities) and there is no clear deviation from the latter.
- (2) The agreed prices may be increased to compensate for increased costs. This is the case, for example, if third parties from whom the provider obtains necessary services to provide the services owed under this agreement increase their prices. Furthermore, price increases are possible to the extent that it is caused by an increase in tax.
- (3) In the event of changes to the terms and conditions of the contract, the service descriptions and price increases, the contractual partner shall be entitled to a special right of termination at the time the changes become effective.

§ 11 Final clauses

- (1) Amendments to the contract and ancillary agreements must be made in writing, text or electronic form in order to be valid.
- (2) Contradictory general terms and conditions of the customer shall only apply if and to the extent that the provider has expressly agreed to them in writing.
- (3) The customer may transfer the rights and obligations under this agreement to a third party only with the provider's prior written consent.
- (4) These contractual terms and conditions shall apply exclusively. Other terms and conditions of the provider, the customer or third parties are herewith expressly contradicted.
- (5) Should individual provisions of this contract be invalid in whole or in part or become invalid after conclusion of the contract, this shall not affect the validity of the remaining provisions. In this case, the contracting parties shall be obliged to negotiate an effective and reasonable replacement provision which comes as close as possible to the meaning and purpose pursued by the invalid provision. This shall also apply in the event of a contractual loophole.
- (6) This agreement shall be governed exclusively by the laws of the Federal Republic of Germany.
- (7) The place of jurisdiction for disputes regarding the effectiveness and implementation of this contract is Mönchengladbach, Germany.