



proMX AG

General Terms

proMX AG
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proMX AG General Terms

1 Quote validity / Amendments / Errors

All quotes remain subject to change. Amendments and errors reserved.

2 Travel- and Lodging Costs

Travel- and Lodging costs and all out of the ordinary meal expenses will be paid by the customer.

The following applies to all travel to and from the customer site by employees of proMX AG that are part of a project:

- € 0.60 will be charged per vehicle for each kilometer traveled.
- Travel with train and out of the ordinary meal expenses will be billed according to the legal blanket allowance (per person) upon presentation of receipts.
- Additionally to the daily rate, the customer will be billed an extra of 60€/hour and employee for traveling time unless the employee spends 8 hours or more on site.

3 General Terms for providing service; Appointments

3.1 Approval

Should proMX perform work as an exception, the customer is obligated immediately to approve the rendered effort by proMX AG as stated on the action report. proMX AG reserves its right for partial acceptance. Ten days after the action, report or partial acceptance have been issued they are deemed approved by the customer.

3.1.1 Refusing approval

The customer cannot refuse approval unless the work performance of proMX AG is such that the rendered service is not in a state that justifies an approval.

The following defect classes are agreed upon:

- Defect class 1: because of the errors the practical use (economically sound use) is not given or unreasonably limited or encumbered.
- Defect class 2: the practical use is not limited in such ways that the performance test cannot be finished. Those errors will be eliminated during the duration of the performance test.
- Defect class 3: the errors have little or no effect on the practical use.

The final defect class of an error will be determined amicably between proMX AG and the customer according to § 640, clause 1, record 2 German civil law.

Remaining errors of defect classes 2 and 3 will be fixed under warranty according to a timetable approved by the customer.

Defect class 1 errors are deemed “serious”, defect class 2 and 3 errors are deemed “insignificant”.

3.1.2 Exclusion of accountability for 3rd party Hard- and Software

Approval cannot be denied in regard to errors of 3rd party hard- and software that was not provided under this contract or operating errors that were not caused by proMX AG.

3.2 Contact Person

Prior to the start of a project, the customer provides proMX AG with a dedicated contact. This person is in charge of establishing contact with the experts and other persons who might be involved in that project. Furthermore, this contact will need to have authority to make necessary decisions on behalf of the customer. The contact also functions as the authorized receiving agent.

3.3 Obligation to co-operate

The customer will provide proMX AG with the necessary working environment (i.e. system capacity, computers, rooms, phone- and network ports, etc.) free of charge and ensure to keep it in working order. If applicable, further obligations of the partner are stated in the quote. To provide its service, proMX AG depends on the partner fulfilling their obligations on time. Should this not be the case and result in delays and/or higher workloads, proMX AG – save further rights according to law – can demand a change in regards to timetable, workload, and pricing.

3.4 Terms of payment

Additional Services

The rendered efforts of proMX AG employees (provisions under “Travel- and Lodging Costs”) are due immediately after invoicing.

Delay of payment

All payments are due immediately after invoice has been delivered to the customer.

Service times

proMX AG delivers its service within 8 hours per working day (Monday through Friday) between 8am and 8pm.

If a customer requests services to be performed outside regular working hours, the following premiums are applied if proMX AG did not cause services having to be delivered outside of the aforementioned working hours (e.g. project delay):

Non-standard working times	Time	Premium on top
Night time	8pm - 8am	50 %
Saturdays	8am - 6pm, 6pm - 8am	50% - 75 %
Sundays	8am - 6pm, 6pm - 8am	75% - 100 %
Public holidays	All day	125 %
Christmas/ New year's eve	2pm - midnight	150 %
Dec. 25th, 26th, Jan. 1st, May 1st	All day	150 %

4 proMX software subscription

4.1 Contract term

The initial contract term for proMX software subscriptions is 12 months starting at the conclusion of contract. The contract term is extended by another 12 months each time unless the contract is terminated in written form three months before the end of the subscription period at the latest.

4.2 Increasing and reducing the number of licenses

After consultation, increasing the number of licenses is possible at all times. Reducing the number of licenses acquired with the original subscription is possible only until three months before the end of each subscription period.

4.3 Term of payment

Payment is made in advance on a monthly basis for the upcoming month of subscription. If and when payment is made for several months in advance, the customer is granted a discount. This discount amounts to ten per cent (10 %) of the total amount when payment is made on time for 12 months. If payment is made on time for 6 months, the discount is five per cent (5 %) of the total amount.

5 Reference agreement

The customer agrees to act as an active reference customer to proMX AG.

6 Liability for defects

The limitation period for any defect claims for services begins with their provision, for work the limitation period begins upon approval thereof and amounts to 12 months. The shortening of the statutory limitation period does not apply in cases of willful intent, gross negligence, including willful intent and gross negligence of legal representatives or vicarious agents, fraudulent concealment of a defect or issuing a guarantee for the quality of work.

The customer is obligated to notify proMX AG in written form of any defects in an understandable fashion including information relevant for the detection of defects. The customer is obligated to support proMX AG in detecting defects within reasonable bounds.

In case of proven defects of title proMX warrants guarantee by supplementary performance by providing the customer legally unobjectionable usage of the product or at their discretion of the exchanged or amended equivalent product. The customer must accept a new version of the product if the contractual range of functions remains the same and the exchange is not unreasonable. The urgency of repair work depends on the extent to which operations are affected.

If, during the limitation period, the customer does modifications, additions and other interferences to the entrusted software or the services or parts of services himself or instructed a third party to do so, the statutory defect claims are excluded, unless the customer proves, in connection with the defect report, that the interference is not the cause of the claimed defect.

proMX AG is entitled to charge for its efforts insofar as it become active on account of the defect report without the customer having proved a defect.

Liability for compensation conforms exclusively to the provisions under "Liability and right to compensation".

7 Liability and right to compensation

According to the legal provisions, proMX AG is fully liable only to replace damages which were caused with intent, including intent by its legal representatives or vicarious agents. proMX AG is liable in cases of gross negligence or non-existence of a state proMX had guaranteed in written form only to the amount of the predictable damage which was to be avoided by the breached obligation or guarantee.

Compensatory claims - irrespective of their legal grounds - and claims to replace wasted expenses against proMX AG which presuppose mild negligence exist only if an essential contractual obligation was breached (cardinal obligation). A cardinal obligation is an obligation whose fulfillment in itself makes the proper execution of the contract possible in the first place and in whose adherence the contract partner can regularly trust. The liability for mild negligence herein regulated is dependent on the case of damage limited to the predictable typically occurring damage. proMX AG is liable to the extent of the annual value of services during whose execution the damage occurred paid to proMX AG but a maximum of € 60,000.00. Liability for lost proceeds is excluded.

This limitation of liability is final. It is binding for all compensatory claims independent of their legal reason, especially in sight of any pre-contractual or collateral contract claims.

proMX AG is not liable for any damages or disadvantages which are a result of the fact that a computer system or a part thereof must be turned off or is otherwise impaired during the operating times of the customer for installation or maintenance reasons.

However, the customer has the right to expressly ask that proMX AG not execute repair or maintenance work during specified hours.

The customer is obliged to back up his data in regular intervals but a minimum of once per day. Failure to do so constitutes contributory negligence.

8 Jurisdiction

The place of jurisdiction is Nuremberg.