

PROPSTER
Terms and Conditions
Version 12.06.2022

1. APPLICABILITY, AMENDMENT AND SUPPLEMENTATION

- 1.1 **The contracting party of** Sonderwunsch Meister GmbH ("**PROPSTER**"), Mariahilfer Straße 37-39/DG, 1060 Vienna, registered in the Commercial Register of the Commercial Court of Vienna under FN 477854 b, VAT No.: ATU 72559689, Tel.: +43 1 361 01 01, e-mail: office@propster.tech is hereinafter referred to in these General Terms and Conditions (the "**GTC**") as the "**CUSTOMER**". PROPSTER and the CLIENT are jointly referred to as the "**CONTRACTING PARTIES**" and individually each as the "**CONTRACTING PARTY**".

1.2 use of the PROPSTER software (the "**SOFTWARE**") is based on the order (the "**ORDER**") of a PROPSTER PLAN and or Add-Ons by CUSTOMERS and is subject to the **PROPSTER User Licence Agreement and the PROPSTER Marketplace User Agreement**:

Marketplace User Agreement available at:

https://propster.tech/wp-content/uploads/2022/09/2022_06_12_Propster_User-License_en.pdf

User Licence Agreement & Marketplace User Agreement available at:

https://propster.tech/wp-content/uploads/2022/09/2022_06_12_Propster_User-License_en.pdf

1.3 These GTC shall apply - subject to a separate agreement in individual cases - bindingly to all software support services (the "**SERVICES**") which PROPSTER provides to the CUSTOMER on the basis of the ORDER or any other individual agreement. The validity of the CUSTOMER's general terms and conditions is expressly excluded; this also applies to all confirmations or communications of the CUSTOMER in which its general terms and conditions are included. The CUSTOMER acknowledges and agrees that these GTC (including the documents referenced therein) shall govern all SERVICES provided by PROPSTER.

- 1.4 PROPSTER reserves the right to amend these GTC at any time and for any reason, and such amendments may in particular include the imposition of new or additional terms or conditions. Amendments or supplements to these GTC shall become effective and legally binding for the CUSTOMER after the expiry of one month following the transmission of a

notification to the CUSTOMER. The notification of amendment shall contain information on the material content of the amendments as well as the indication that the changes become legally binding after the expiry of one month after delivery of the notice of change, unless the CLIENT, in the case of continuing obligations between the CONTRACTING PARTIES, has objected to the changes in writing within one month and terminates the contract with respect to the SERVICES.

2. SOFTWARE SUPPORT SERVICES

2.1 PROPSTER offers the following additional SERVICES in particular with regard to the SOFTWARE:

2.1.1 Customisation of the SOFTWARE (the "CLIENT SPECIFIC ADAPTATION"):

- a) **Presentation of the** individual real estate projects according to the needs and requirements of the CLIENT on the basis of the plans, visualisations and details provided by the CLIENT, whereby these requirements are explicitly based only on the layout and function template. An up-to-date overview of the current layout and function template can be viewed at <https://at.demo.propster.app>. All data is stored cloud-based.
- b) **Provision of the product database** via the PROPSTER Marketplace.
- c) **Entry of products of** the CUSTOMER or of third-party manufacturers into the product database on the basis of information and image materials provided by the CUSTOMER or third-party manufacturers. (PROPSTER shall not bear any costs for the creation of required documents, such as product images, 3d data or textures).
- d) **Recommendation and presentation of the possible equipment variants** on the basis of the information provided by the CUSTOMER in the PROPSTER Marketplace and, after confirmation of the product selection, incorporation of the products into the respective project.
- e) **Activation of the possible services on the** basis of the information provided by the CUSTOMER in the PROPSTER Marketplace.

2.1.2 Preparation and provision of **alist of** the respective selected products and services in type, form, colour, etc. as well as the respective exact specification, the quantity and the price estimated for it. In this context, it is clarified that no conclusion of a contract with the end customers of the CUSTOMER (the "**END CUSTOMERS**") takes place via the SOFTWARE.

2.1.3 **Technical support for CUSTOMERS and END CUSTOMERS** for questions about the SOFTWARE and problems with its use. Support for end customers can be reached at support@propster.tech and support for CUSTOMERS can be reached at helpdesk@propster.tech and will respond within a reasonable period of time. Telephone support can be reached for brief questions at +43 1 361 01 01, but support requests are only accepted in writing and must be made via the message box or the respective e-mail address.

2.1.4 **Consultancy services**, in particular in connection with the use of the SOFTWARE.

2.2 The SERVICES shall be provided by PROPSTER on the basis of the information and documents provided by the CUSTOMER. If required, the CUSTOMER shall provide test data at its own expense and give PROPSTER the opportunity to perform tests.

2.3 The CUSTOMER undertakes to provide the information necessary for the SERVICES in accordance with the specifications and formats required by PROPSTER.

2.4 For a CUSTOMER SPECIFIC ADAPTATION, the CUSTOMER shall provide appropriate information (documents, descriptions, data, pictorial representations, etc) at his own expense. The CUSTOMER shall be responsible for the correctness and completeness of this information and shall be liable for being authorised to dispose of and hold PROPSTER harmless against all claims of third parties in this connection. PROPSTER shall check the documents and information provided by the CUSTOMER as to whether they are fundamentally suitable for the intended use. PROPSTER shall provide the CUSTOMER with an offer for the agreed specifications, the price and the time of provision of the CUSTOMER SPECIFICATION (the "**OFFER**") and shall provide the SERVICES after confirmation of the OFFER by the CUSTOMER (the "**CONFIRMED SPECIFICATION**") on the basis of the CONFIRMED SPECIFICATION. Additions or amendments by the CUSTOMER to the CONFIRMED SPECIFICATION after acceptance of the OFFER may, if possible and confirmed by PROPSTER, result in changes to the OFFER, including time limits and price agreements. PROPSTER shall not be obliged to comply with requests for additions or changes to the CONFIRMED SPECIFICATION until the CUSTOMER has confirmed the relevant changes to the OFFER.

2.5 the CUSTOMER SPECIFIC ADJUSTMENT, after complete delivery, payment of the invoice shall be deemed to be confirmation by the CUSTOMER that the CUSTOMER SPECIFIC ADJUSTMENT - after verification by the CUSTOMER -

corresponds to the CONFIRMED SPECIFICATION and that the SERVICES have been provided by PROPSTER as agreed.

2.6 If, after reviewing the CUSTOMER SPECIFICATIONS, the CUSTOMER believes that the CUSTOMER SPECIFICATIONS are materially defective or deviate in material respects from the CONFIRMED SPECIFICATIONS, the CUSTOMER shall notify PROPSTER of such material defect or material deviation promptly and no later than 7 days after delivery of the CUSTOMER SPECIFICATIONS, attaching supporting documentation. The notification shall be sent by e-mail to helpdesk@propster.tech. In this case PROPSTER shall take reasonable measures to remedy the defect or deviation as soon as possible.

2.7 Should it become apparent that it is factually or legally impossible for PROPSTER to complete the SERVICES in accordance with the CONFIRMED SPECIFICATION, PROPSTER shall notify the CUSTOMER accordingly. If the CUSTOMER does not adjust the SERVICE SPECIFICATIONS accordingly, PROPSTER may refuse to provide the SERVICE. The CUSTOMER shall be obliged to reimburse the costs already incurred by PROPSTER.

3. TERMS OF PAYMENT

3.1 SERVICES shall be charged at the prices agreed in the relevant ORDER or other individual agreement between the CONTRACTING PARTIES. If the CLIENT causes the estimated time to be exceeded, the SERVICES shall be charged according to the actual time spent, based on the agreed hourly rates, which can be seen in the letter of offer.

3.2 Unless otherwise agreed between the CONTRACTING PARTIES, all prices shall be "ex works", in Euro, plus applicable taxes, duties, fees and charges and reasonable expenses.

3.3 Invoices sent by PROPSTER to the CUSTOMER shall be due and payable without deduction within 14 days after invoicing. The CUSTOMER is not entitled to withhold or set off payments for any reason.

3.4 Failure by the CUSTOMER to comply with agreed payment dates shall entitle PROPSTER to suspend ongoing work, to block access to the software and to withdraw from the CONTRACT. In the event of late payment, the CUSTOMER shall pay statutory interest on arrears. If instalment payments have been agreed and the CUSTOMER fails to pay an instalment when due, PROPSTER shall be entitled to prematurely call in all outstanding instalments.

4. PLACE OF DELIVERY

4.1 The place of delivery for the SERVICES of PROPSTER shall be the registered office of PROPSTER in Vienna, Austria.

4.2 The risk of the transport of data and programmes in digital form, including the risk of manipulation of such data and programmes, shall be borne by the CUSTOMER as soon as PROPSTER makes data available online or has transmitted data to the CUSTOMER.

5. DELIVERY DATES

5.1 Unless expressly agreed otherwise between the CONTRACTING PARTIES, dates or periods for delivery or completion of the SERVICES shall be deemed to be non-binding indicative dates or periods. Agreed deadlines for the delivery or completion of the SERVICES shall commence on the date of acceptance of the OFFER.

5.2 PROPSTER shall endeavour to meet the targeted deadlines for delivery or completion of the SERVICES to the best of its ability. However, the delivery or completion dates can only be met if the CUSTOMER (i) provides PROPSTER with the necessary information and documents and performs necessary preparatory work in a timely manner; and (ii) cooperates with PROPSTER to the extent necessary.

5.3 PROPSTER shall not be liable for delays in delivery and increased costs resulting from incorrect, incomplete or subsequently changed data and information or other acts or omissions of the CUSTOMER. PROPSTER cannot be in default due to such delays in delivery. Any additional costs incurred in connection therewith shall be borne exclusively by the CUSTOMER.

5.4 If the provision of the SERVICES by PROPSTER includes several parts or units (e.g. programmes and/or support sessions, completion in stages), PROPSTER shall be entitled to make partial deliveries to the CUSTOMER and to issue partial invoices after delivery of each unit or part of the SERVICE to the CUSTOMER.

6. LICENCES AND INTELLECTUAL PROPERTY RIGHTS

6.1 All rights, in particular intangible property rights - including source codes, database rights, know-how, trade secrets and irrespective of whether these rights are registered or not - (the "**RIGHTS**") developed or created by PROPSTER and/or

its employees in connection with the provision of the SERVICES shall belong exclusively to PROPSTER, unless the CONTRACTING PARTIES expressly agree otherwise in individual cases.

- 6.2 PROPSTER grants the CUSTOMER a personal, revocable, non-exclusive, non-assignable, non-transferable and non-licensable right to use the CUSTOMER SPECIFIC ADAPTATION against payment of the fee agreed between the CONTRACTING PARTIES, unless the CONTRACTING PARTIES expressly agree otherwise in individual cases.

6.3The CUSTOMER shall not be permitted to remove, conceal or obscure any copyright notices or other proprietary notices PROPSTER from software or materials, in particular the CUSTOMER SPECIFIC ADAPTATION, provided in accordance with these GTC(s).

6.4The CLIENT shall not modify, edit, adapt, reverse engineer, reproduce, disassemble, decompile or duplicate the CLIENT Specific Adaptation or use any other technical or logical method in relation thereto to affect or gain information about its structure, processes, operation or other protectable features

- 6.5 PROPSTER also provides the customer with open source software, the use of which is subject to the terms and conditions of the respective licensor. A list of the open source software used in the respective version of the PROPSTER technology and the corresponding licence conditions are available at the following link: <https://www.gnu.org/licenses/gpl-3.0.html>

7. **CONFIDENTIAL INFORMATION**

7.1In the course of their business relationship, the CONTRACTING PARTIES may grant each other access to certain information and materials, including but not limited to the other Party's business, source codes, trade and business secrets, know-how, data, service trades and products, which is confidential and of substantial value to that CONTRACTING PARTY (the "**INFORMATION**"), which value would be compromised if such CONFIDENTIAL INFORMATION were disclosed to third parties. The CONTRACTING PARTIES shall maintain and protect the confidentiality of the CONFIDENTIAL INFORMATION in the same manner as they protect their own confidential information of a similar nature. The CONTRACTING PARTIES shall take the necessary precautions to protect and preserve the secrecy and confidentiality of the CONFIDENTIAL INFORMATION.

7.2 CONFIDENTIAL INFORMATION shall not include, without prejudice to the other provisions of these GTC, any information which: (i) is or subsequently becomes publicly known through no fault of the disclosing CONTRACTOR; (ii) is already known to the disclosing CONTRACTOR at the time of disclosure; (iii) the disclosing CONTRACTOR has lawfully received from a third party without restriction for disclosure; (iv) is proven to have been independently developed by the disclosing CONTRACTOR.

7.3 The confidentiality obligation of the CONTRACTING PARTIES shall remain in force for an unlimited period of time even after the end of the business relationship between the CONTRACTING PARTIES.

8. WARRANTY

8.1 PROPSTER warrants that the SERVICES will be provided in accordance with best industry standards and that the CUSTOMER SPECIFIC ADJUSTMENT will be in accordance with the details described in the CONFIRMED SPECIFICATION.

8.2 PROPSTER gives only the warranties expressly stated herein or otherwise and excludes all other warranties, confirmations, guarantees and representations in respect of the CUSTOMER SPECIFIC ADAPTATION to the fullest extent permitted by law. Recommendations or information provided by PROPSTER shall only constitute a warranty to the CUSTOMER if expressly agreed as such.

8.3 In order to make a claim under the warranty, the CUSTOMER shall (i) immediately send a detailed description of the defect to PROPSTER at helpdesk@propster.tech; (ii) provide PROPSTER with all documents and information necessary to remedy the defect. If there is indeed a defect, PROPSTER shall use its reasonable endeavours to remedy it within a reasonable period of time.

8.4 The warranty period shall end six months after performance of the SERVICES or delivery of the CUSTOMER SPECIFIC ADAPTATION. The presumption of defectiveness pursuant to § 924 ABGB is expressly excluded.

9. LIMITATION OF LIABILITY

9.1 PROPSTER shall generally not be liable to the CUSTOMER or the END CUSTOMERS for the products or services and information made available for selection via the SOFTWARE.

9.2 PROPSTER shall not be liable to the CUSTOMER or the END CUSTOMER for the selection, quality, delivery or defects of the equipment of the respective property made available via the SOFTWARE and selected by the END CUSTOMER. In particular, the CLIENT is also not liable for the actual availability of the respective equipment, its timely delivery or its professional installation.

9.3 PROPSTER shall be liable exclusively for damage caused intentionally or by gross negligence. Any liability for damage caused by slight negligence is excluded. PROPSTER shall not be liable for indirect damage, loss of profit, consequential damage and immaterial damage of any kind. The limitation of PROPSTER's liability shall apply in each case to the maximum extent permitted by law. Claims against PROPSTER must be asserted (i) in the event of other loss of claims within 6 months of knowledge of the damage; and (ii) to the exclusion of the personal liability of all representatives, employees and subcontractors of PROPSTER exclusively against PROPSTER.

9.4 PROPSTER's liability towards the CUSTOMER in connection with the SERVICES provided under these GTC shall be limited to the total payments received by PROPSTER for the provision of the respective SERVICE, irrespective of the legal basis of the claims.

10. DATA PROTECTION

10.1 The CONTRACTING PARTIES undertake to comply with the applicable data protection provisions in connection with the provision of the SERVICES under these GTC and shall ensure compliance therewith by their agents, employees and third parties attributable to them

10.2 PROPSTER's data protection declaration (available at <https://propster.tech/privacy-policy>) shall form an integral part of the CONTRACT in the version applicable at the time.

11. OTHER PROVISIONS

11.1 Individual written agreements between the CONTRACTING PARTIES which deviate from these GTC shall take precedence over these GTC.

11.2 If a provision of these GTC is or becomes invalid or if these GTC contain a loophole, this shall not affect the validity of the remaining provisions. Instead of the invalid provision, the parties shall agree on a valid provision which comes as close as possible to the economic intention of the parties. This shall also apply to

any loopholes.

11.3 The GTC shall be governed by Austrian law, excluding the conflict of laws rules and the UN Convention on Contracts for the International Sale of Goods. The place of jurisdiction for all disputes arising from or in connection with these GTC shall be the competent court in Vienna.