PROSTEP
OpenDESC.com Terms and Conditions

§ 1 Subject matter

1.
The subject matter of this Agreement is the rendering of services in connection with the PROSTEP OpenDESC.com portal. CAD data translation and the data transfer via OFTP are among the services offered by PROSTEP. These services can be used by Customer through a Service Agreement and an Amendment to the Service Agreement if applicable. The rendered services are – unless otherwise defined below – described in the attachments

- Data Transfer

- Data Translation.

2.
PROSTEP reserves the right to change the OpenDESC.com Terms and Conditions and attachments by giving 60 days notice. The new terms and conditions will be published in the OpenDESC.com portal. Customer may terminate this Agreement for cause within 30 days after receipt of the new Terms and Conditions, to take effect at the end of the next calendar quarter. If Customer does not terminate, the new Terms and Conditions shall apply starting from the date set forth in the notice. If Customer terminates the Agreement, PROSTEP will refund the payments which were made for the period exceeding the termination date; other claims and remedies are excluded.

§ 2 Services to be rendered by PROSTEP
The services rendered by PROSTEP are described in the attachments

- Data Transfer

- Data Translation

§ 3 Duties of the Customer
The duties of the Customer are described in the attachments

- Data Transfer

- Data Translation

§ 4 Customer's Obligation to co-operate
At any time Customer is obligated to co-operate and shall provide PROSTEP with any necessary information (e.g. required partner data for the data transfer service) for the performance of the contractual services in a timely manner. If Customer does not meet the obligation to co-operate in orderly, proper form or a timely manner, PROSTEP may invoice any additional costs or efforts resulting here from at the effective rates.

§ 5 Acceptance
The acceptance process on part of the Customer is described in the attachments

- Data Transfer

- Data Translation

§ 6 Service Times

1.
The PROSTEP OpenDESC.com Service with the automated data transfer process is available 24 hours 7 days a week. However a 100 % availability cannot be guaranteed due to the different systems involved (among others on the customer's or recipient's side or the network providers).

2.
PROSTEP shall receive error reports from Customer by E-mail or telephone during the following business hours:

Monday – Thursday 9:00 a.m. through 5:00 p.m. and Friday 9:00 a.m. through 4:00 p.m. with the exception of national and local public holidays at the place of PROSTEP´s principal office. Outside these business hours error reports can be reported via voice message or by E-Mail.

§ 7. Remuneration and Payment

1.
The Customer shall apply for registration stating his relevant data. The registration is subject to a registration fee according to the then effective price list.

2.
The charge rates for services delivered under this Agreement are listed in the price list which is effective at the moment of delivery and will be invoiced on a monthly basis. An annual fee becomes due in the first month. Individual service orders shall be invoiced upon completion of the services on a monthly basis. In case of Standard Framework Agreements Customer agrees to order a certain volume during a defined period of time. Invoicing shall be on a monthly basis for the preceding month and is based upon the remuneration agreed upon in the Framework Agreement, in accordance with the then current price list. The remuneration fixed in the Standard Framework Agreement is based on the assumption that Customer will use the entire volume to which Customer has committed himself to. In the event that Customer falls short of using the agreed volume by more than 10 %, PROSTEP has the right to claim an additional charge in the amount of the balance between the remuneration set forth in the Framework Agreement and the remuneration due according to the effective price list for the actually used services.

3.
To the extent that the parties agree on volume-based invoicing, invoices will be issued based on file type (single file, assembly or drawing sheet) and file size (in MByte) subject to the following conditions. The volume will be counted in the uncompressed format of the originating CAD system for each model / file; any portion of a MByte will count as a full MByte. The PROSTEP system environment will be used for counting purposes. Customer will be invoiced for the volume of actually converted data (in Mbyte) for each translation job whereas the amount of MByte counted may differ from the amount of MByte provided by Customer (e.g. in case of multiple usage of repetitive parts in assemblies). PROSTEP will invoice Customer for services that are not volume-based (e.g., customer specific adaptation) on a time and materials basis, according to the then effective price list or specific provisions in the Framework Agreement.

4.
Customer will be invoiced on a monthly basis. Invoices shall be due for payment within fourteen (14) days after their receipt with no deduction. The compensation is subject to the statutory value added tax valid at that time. If Customer is in default with its payments, and customer does not remit payment within the time limit set in a first reminder, PROSTEP may stop the further accomplishment of the contractual services and may block the account.

If the Customer remits payment within three months after blocking, the account may be reopened against a reactivation fee listed in the price list effective at that time. Once the account is reactivated existing partner connections remain in use. If the customer does not remit payment within three months after blocking a reactivation is no longer possible and the account as well as all related partner connections will be permanently deleted.

Customer shall not offset claims, unless its counter-claims are undisputed or have become res judicata. Customer shall assign claims against PROSTEP only with the prior agreement of PROSTEP.

§ 8 Default in Supplies and Services

1.

PROSTEP is unable to meet the agreed dates, unless Customer complies with any and all of its obligation to cooperate (§ 4). In the event of modifications and enhancements and in the event of not sufficient co-operation, the mutually agreed dates may be delayed. In these cases and in other events for which PROSTEP is not responsible (e.g., force majeure, labour unrest, etc.) the dates for supplies and/or services shall be extended by the time of the disruption and by a reasonable period for resumption of the service.

2.

In the context of the rendered services PROSTEP will transfer and convert the data by automated processes directly to the recipient or will make it available for data transfer. No contractual assurance can be made with regards to the transmission time, due to the systems involved on both sides, in particular with regards to the kind and quality of the connection - bandwidth of Internet connection, ENX bandwidth or availability of ISDN phone lines.

3.

If PROSTEP is in default, Customer shall initially grant a reasonable grace period in writing for the due rendering of supplies and services. Further claims may not be asserted unless this grace period has expired without the default being remedied. If Customer wishes to rescind the Agreement upon expiration of the grace period set forth in writing, Customer shall announce this intention in the letter stipulating the grace period.

§ 9 Liability

1.

PROSTEP shall be liable without limitation in case of personal injury as well as in other cases where unlimited liability is mandatory (e.g. under the product liability law, in case of intent or gross negligence, damages of life, body or health).

2.

In case of ordinary negligence, the liability of PROSTEP is for teh foreseeable and typical damages limited to a maximum sum of EUR 500.000,-- for each of damage and to a maximum sum of EUR 2.000.000,-- for any and all cases of damages ini a single contractual year.

3.

Notwithstanding par. 2., PROSTEP shall not be liable for claims due to consequential or indirect damages (including, but not limited to, consequential harm caused by a defect) such as loss or profit, interruption of production, loss of use orcontractual claims of third parties.

4.

Except in case of intentional wrongdoing, PROSTEP shall only be liable for the loss of data if Customer has performed system checks and data backups at regular intervals (at least once a day and prior to any interference e.g. installation of new programs or versions) and only if the data may be reproduced from machine-readable data stores within a reasonable time and at a reasonable expense.

§ 10 Access by Third Parties

1.

In order to prevent misuse of the openDESC.com services the parties have to ensure, that passwords or other access identifications are carefully distributed, saved and kept confidential. In case of unauthorized access of a third party to the OpenDESC.com portal by using access data of the Customer, the Customer shall indemnify PROSTEP from all claims including third party claims.

If PROSTEP suspects a misuse of passwords it will immediately inform the Customer. It is strongly recommended to change passwords regularly and it can be done anytime at no extra charge.

2.
Assignment or transfer of any openDESC.com services to third parties is not permitted without prior written consent.

§ 11 Confidentiality and data protection

1.
The parties agree to treat any information, records, and data that are disclosed to them in the course of the performance of this Agreement as confidential and to deny any third party access, except for the purpose of this Agreement. Customer shall take the appropriate measures to ensure that unauthorized third parties have no access to the openDESC.com services, or to any other PROSTEP materials. The parties shall notify their employees of their duty of confidentiality.

2.
PROSTEP and Customer will comply with the data protection rules and regulations. PROSTEP will process Customer's data electronically and comply with data protection rules and regulations. However, Customer is responsible for securing personal data prior to the commencement of the contractual services in such a manner that no unintended (not required for the performance of this Agreement) access of PROSTEP is possible. In general, Customer shall be responsible for obtaining the authorizations from its employees, customers, and business associates of Customer and any other affected individuals that may be required under the data protection law.

Customer shall indemnify and hold PROSTEP harmless from and against any claims that the aforementioned persons may assert against PROSTEP for non-compliance with these duties. This includes also the on site data access or via remote data transmission.

3.
Sole responsibility for the content of the transferred data is with the Customer. Customer is also responsible for complying with legal requirements and copyright limitations. PROSTEP has no influence over this issue. Transfer or distribution of condemnable content by using PROSTEP Services is strictly prohibited.
In the context of rendering the services PROSTEP is under no obligation to perform random checks or inspections. If PROSTEP becomes aware of any type of infringement, PROSTEP is entitled to terminate the rendering of services for the Customer immediately.

4.
The duty of confidentiality shall survive for five (5) years after the termination of this Agreement.

§ 12 Term and Termination

1.
This Agreement is made for an indefinite time. This Agreement may be terminated by each party by giving three (3) months notice to take effect at the end of the Agreement year.

2.
The parties reserve the right to terminate any Agreement for cause. The non-defaulting party shall notify the defaulting party in writing of its intention to terminate this Agreement. The notice shall specify the reason for termination, and set forth a reasonable period in which the default is to be cured. Cause for termination shall exist, but is not limited to the following events:

- default or absence of services to be rendered and a granted grace period set for in writing has expired without remedy.

- if Customer is in default with its payments for more that 4 weeks;

- breach of his obligation to co-operate by customer

- the threat of instituting or the institution of insolvency proceedings against the assets of either party, or if their institution is declined for lack of assets.

3.
Any termination notice must be in writing to be effective.

§ 13 Venue and Governing Law; final clause

<u>1.</u>

Place of performance is the principal office of PROSTEP. The exclusive venue for all disputes arising from or in connection with this Agreement shall be at the city of the principal office of PROSTEP, if Customer is a merchant of trade or a legal entity, or a special fund under German public law or holds no inland place. This Agreement shall be governed by German law, and the UN Convention on the Sale of Goods shall be excluded.

<u>2.</u>

If individual provisions of this Agreement are or become ineffective or in case the Agreement is incomplete, the effectiveness of the remaining provisions shall not be affected. If one of the cases stated above appears, the contractual partners shall attempt to resolve or amend these topics in a mutual consent, which will accomplish the intended commercial intention as close as possible in a legally allowed manner. The same paragraph shall apply to any omissions.

<u>3.</u>

In case of discrepancies or interpretation difficulties the German version of the Agreement shall prevail.

PROSTEP OpenDESC.com
Terms and Conditions
- Attachment Data Transfer -

§ 1 Subject Matter
1.
The subject matter of this Agreement is the rendering of engineering-data transfer services on behalf of Customer. These services include the automated transmission of engineering-data via OFTP/ OFTP2 or https to and from defined partners of Customer. In this context PROSTEP is exclusively data transmitter. The data is transferred from the Customer to his partner and vice versa by an automated process and provides for a 1 : 1 transfer of the data without any modification of the data content.

2.
The performance of this agreement is exclusively subject to the provisions of the Open.DESC.com Terms and Conditions. Deviating contract terms and conditions (e.g., terms of delivery, terms of payment) of Customer do not form part of the contract, including cases in which PROSTEP does not expressly object to them.

3.
Representations in evaluation programs, product or service descriptions, and the like do not constitute a guarantee. Guarantees require the express written confirmation of PROSTEP.

4.
Modifications and amendments of this Software Maintenance Agreement and the Terms and Conditions must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory writing requirement.

§ 2 Service to be rendered by PROSTEP
1.
PROSTEP shall accomplish the transfer of data via OFTP / OFTP2 or https on behalf of the Customer. PROSTEP is under no obligation to examine or change any of the provided data prior to the transfer.

2.
PROSTEP will accomplish the transfer immediately after the data was successfully delivered to the PROSTEP OpenDESC.com portal and processes the data automatically. PROSTEP shall not be responsible for any delays due to a non-availability of any of the systems involved on the recipient side (e.g. Internet, capacity of the data centre, OFTP / OFTP2 transfer, data quantity, etc. …)

3.
In the event of a non expected delay of the transfer process due to problems with the involved systems PROSTEP shall immediately notify Customer.

4.
PROSTEP advises that the data will be transported in the condition it was delivered to the Open-DESC.com Service Portal. The correction of inaccurate inaccurately entered or missing data or a notification of such inaccuracies is not part of the software's functionality, on which this service is based.

§ 3 Duties of Customer
1.
In order to exchange data to partners of Customer, Customer shall transfer the relevant engineering data per https or via OFTP / OFTP2 to the PROSTEP OpenDESC.com portal. Customer has to ensure that the data to be transferred is accurate, free of any viruses and transferable.

2.
The data made available by Customer to the PROSTEP OpenDESC.com portal for further transfer to his partner will be available in the portal 28 days after delivery to the partner. The data will be irrevocably deleted in the Portal after 28 days.

3.
In case the data of a defined Partner is transferred to the Customer, it is the Customer's obligation to retrieve the data made available to him by the Partner via PROSTEP within 28 days from the Open-DESC.com portal (download function). The data will be irrevocably deleted in the portal after 28 days.

§ 4 Acceptance

The service shall be deemed to have been rendered if in case of a transfer

a) from the Customer via PROSTEP to the Partner, the Customer has received the E-Mail notification about the proper transfer of the data to the Partner

or

b) from the Partner via PROSTEP to the Customer, the data for the Customer is available for download in the PROSTEP OpenDESC.com portal and the Customer has received an E-mail notification about the provision of data for the customer.

The notification shall be deemed to be received if the sender proves it has been duly sent and unless the recipient can show credibly, that the message was not received.

PROSTEP OpenDESC.com
Terms and Conditions
- Attachment Data Translation -

§ 1 Subject Matter
1.
The Subject of this agreement is the rendering of services with respect to CAD-data translations. These services include the translation and where applicable the CAD Data preparation (Quality Assurance or OEM Specific Adaptation) in accordance with the OpenDESC.com specifications.

2.
The following Terms and Conditions shall apply to any individual order placed by Customer as well as in addition to the provisions contained in any Framework Agreement concluded between Customer and PROSTEP. If any Framework Agreement does exist, the terms and conditions of such Framework Agreement and the following Terms and Conditions shall apply to all services provided during the term of the agreement and defined in such agreement, including all instances where individual services are processed and rendered pursuant to the Framework Agreement and no express reference is made to such Terms and Conditions.

3.
The performance of contractually agreed services is exclusively subject to the provisions of the Framework Agreement or the following Terms and Conditions. Deviating contract terms and conditions (e.g., terms of delivery, terms of payment) of Customer are not form part of the contract, including cases in which PROSTEP does not expressly object to them.

4.
Representations in evaluation programs, product and service descriptions, and the like do not constitute a guarantee. Guarantees require the express written confirmation of PROSTEP.

5.
Modifications of and amendments to this Software Maintenance Agreement and the Terms and Conditions must be in writing, unless otherwise provided in the following terms and conditions; the same applies to a waiver of the mandatory writing requirement.

§ 2 Service to be rendered by PROSTEP
1.
PROSTEP shall convert the supplied CAD-data into the agreed target format and shall provide all contractually agreed services described in the OpenDESC.com Portal or Framework Agreement during the business hours defined in §6.2 of the OpenDESC.com Terms and Conditions.

2.
As far as ordered by Customer PROSTEP shall render the data translation with a Quality Assurance. In doing so PROSTEP expands the translation by methodical and systematic measures to ensure the best possible model quality.

3.
PROSTEP will transfer the work results to Customer via the agreed transfer medium (see also § 3).

4.
Data will be handled and processed during the agreed period of time. In the absence of a separate agreement, this period shall be two (2) full business days (Monday through Friday) following the receipt of data to be processed by PROSTEP and a valid order. The data is deemed to be received by PROSTEP at that point in time, when the data has been received complete and error free by PROSTEP. If the data is received outside of business hours (§ 6.2 PROSTEP OpenDESC.com Terms and Conditions), the data is deemed to have been received at the beginning of the following business day.

The processing is completed when the data is made available for download in the PROSTEP Open-desc.com portal or with the transfer of the data (by means of electronic data transfer (OFTP, OFTP2 or https) or relinquishment to a freight carrier). The risk of loss is transfered to Customer at this time. Data transfer or delivery periods do not count towards the service time. The service time applies to data translation jobs that may be executed without any further questions and errors. Time needed for problem solving does not count towards service time.

<u>5.</u>
In the event data may not be processed within the period of time indicated, PROSTEP shall immediately notify Customer.

§ 3 Duties of Customer
<u>1.</u>
Customer shall provide the prepared CAD data in the agreed upon format via OFTP, OFTP2 or https to the PROSTEP OpenDESC.com portal. Customer has to ensure that the data to be transferred is accurate, free of any viruses and transferable.

<u>2.</u>
The data provided by Customer and the work results generated by PROSTEP are stored 28 days after delivery on the systems of PROSTEP. The data will be irrevocably deleted in the Portal after 28 days.

<u>3.</u>
In order to obtain the best possible translation results, the CAD data must be prepared in accordance with the then current OpenDESC.com guidelines. The current guidelines are available at: www.opendesc.com.

<u>4.</u>
Modifications of the translated CAD models may result as a consequence of the software used in the translation process. Generally, such modifications will occur within the accuracy of the CAD systems involved, this system accuracy may differ between systems. Since PROSTEP has no knowledge of the specifications and/or requirements of the components represented by the CAD data, Customer shall be responsible for validating the converted data in order to ensure that they are suitable for the intended use, and, if applicable, approve them prior to use.

If Customer uses the PROSTEP service to transfer the converted data to a third party without having approved this data prior to being transferred, Customer shall indemnify and hold PROSTEP harmless from and against any claims.

<u>5.</u>
Customer shall ensure that during the execution of the translation job, the necessary number of knowledgeable employees of Customer are available to PROSTEP at all times for technical information and questions.

§ 4 Acceptance
<u>1.</u>
Acceptance is deemed to have been declared if Customer fails to notify PROSTEP of any defects within 10 (ten) business days after provision of the work results in the OpenDESC.com portal in writing, via fax or e-mail, giving a detailed description of the defect(s). Defects, which are not attributable to PROSTEP services, do not hinder the acceptance.

<u>2.</u>
The use of the work results, as intended by Customer, is deemed an acceptance ("implied acceptance").

§ 5 Defects

<u>1.</u>

PROSTEP shall initially perform its warranty obligations for material defects by supplementary perfor-mance.

<u>2.</u>

Due performance of warranty obligations by PROSTEP is, in case of material defects, subject to an immediate notice of defect by Customer in writing of by e-mail containing a detailed description of the defect. The report shall be made by the designated contact person, or if no contact person has been designated, by another authorized person. Customer shall co-operate with PROSTEP in the removal of the defect to the extent required (e.g. by providing any necessary information).

<u>3.</u>

PROSTEP shall assist Customer with the trouble-shooting, including in such cases in which it has not been determined that the error exists in the PROSTEP work results. If, during the trouble-shooting, it can not be demonstrated that the errors that have occurred are due to the supplies and services pro-vided by PROSTEP, PROSTEP shall invoice Customer for the expenses incurred on a time and mate-rial basis.

<u>4.</u>

Customer may terminate the individual order upon the expiration of a reasonable grace period set forth in writing, which allows several attempts of re-performance. Claims for damages and the reimburse-ment of expenses are governed by § 9 OpenDESC.com Terms and Conditions. A Framework Agree-ment may not be terminated for cause unless PROSTEP has failed several times to duly perform its obligations. These are the exclusive remedies in case of material defects and defects of title.

<u>5.</u>

In particular, PROSTEP shall not be responsible for defects that already existed in the data originally provided by Customer, such as design errors, incomplete data records, non-compliance with the agreed data preparation, data export / transmission errors, etc.- PROSTEP advises Customer that a correction of incorrect or incorrect entered data by the OpenDESC software or a notice regarding such errors or defects does not form part of the OpenDESC.com software functionality. This constraint also applies to all geometric corrections, done by PROSTEP during the quality assurance.

<u>6.</u>

PROSTEP is not obligated to remove quality defects and defects of title if the items supplied under the agreement are modified without the consent of PROSTEP, and Customer is unable to prove that the material defect or effect of title is not related to this modification

<u>7.</u>

The limitation period for material defects and defects of title is – except in case of intentional wrongdo-ing – 12 months. The period shall commence on the date of acceptance.