

# License Agreement

## Preamble

prisma is the holder of proper Microsoft solution provider / developer licenses with regard to the software "Microsoft Dynamics NAV" and is a "Microsoft Gold Certified Partner". In this respect, prisma is entitled to grant (sub)licenses to customers and independently develop and distribute customer-based software solutions or add-on applications ("*contractual software*") on the basis of Microsoft Dynamics NAV.

## § 1 Customer Contract

Between the parties and for the legal relationship underlying this License Agreement for the preparation and remuneration of contractual software ("*Customer Contract*"), the contractual arrangements stipulated by the parties (order, order confirmation, performance/tender specifications, product descriptions, project contract, etc.) shall apply in connection with the General Commercial Terms and Conditions by prisma. These Terms and Conditions are enclosed in **Annex 1** with this Agreement and – in relation to any possible purchase conditions and/or other general commercial terms and conditions by the customer – they shall be used solely for the Customer Contract.

## §2 Copyright Protection; Granting of Rights

### 1. Rights of Use with Regard to Microsoft Dynamics NAV

The contract software is based on the software platform Microsoft Dynamics NAV. In this respect, the Microsoft software licensing terms ("*SLT*") shall exclusively apply in their respectively valid version. The SLT are enclosed with this License Agreement in **Annex 2** in a customer copy and may be viewed online on CustomerSource in their respectively most recent version. prisma and the customer agree that Microsoft is exclusively responsible for the SLT content and the licensing and use provisions included therein as well as for the software platform Microsoft Dynamics NAV.

## 2. Rights of Use with Regard to the Contract Software

For the contract software customer-specifically developed by prisma in its own responsibility, the following provisions shall apply exclusively:

- a) prisma is and shall remain the sole author or developer of the contract software and holder of all related copyrights and industrial property rights.
- b) prisma shall hereby grant customer the non-exclusive right of use to utilize the contract software for the customer's own use within the scope of the purpose stipulated in the customer contract, as well as its spatial and objective scope and the period of use.
- c) Permissible use shall comprise the installation of the contract software on a computer system being in the customer's actual possession, its loading, its displays, running and storage or backup as well as the intended use of the contract software by the customer. Without prior written consent by prisma, the customer shall not be entitled to transfer the right of use to third parties; sell or rent the contract software; grant sublicenses for it; publicly reproduce the contract software by wire or wirelessly, or make it otherwise available or accessible to third parties for consideration or gratuitously.
- d) Users and/or devices by the customer having access to the contract software or using it shall be limited to the number specified in the customer contract. Any use in excess thereof shall be inadmissible. Accordingly, the customer shall be obligated to acquire – prior to use – an adequate number of licenses for Microsoft Dynamics NAV for the maximum number of users and/or devices to be able to have access to the contract software or use it.
- e) The customer shall be entitled to make copies of the contract software if this is required, as agreed, for safeguarding the contractual use. If the originals bear a notice referring to copyright protection, the customer shall also affix such notice on the copies made. Serial numbers as well as other features serving as software identification shall not be removed or changed under any circumstances.
- f) Any decompilation of the contract software to other code forms as well as other types of reverse engineering of the different types of contract software development or production shall not be permissible without prior written consent by prisma. Removal of any copy protection or similar protective routines shall not be permitted. Sections (§§) 69e and 69d, subsection 2 and 3 of the German copyright law (UrhG) shall remain unaffected.

- g) The customer's right to editing the contract software shall be limited to maintaining or restoring the stipulated functionality of the contract software.
- h) Without the written consent by prisma, use of the contract software within a network or any other multi-station computer system shall not be permitted if this would provide the possibility of simultaneous multiple use of the contract software and if a corresponding use is not the subject matter of the contract or if it breaches letter d).
- i) Customer shall impose the obligations above on all persons coming into contact with the contract software.
- j) The provisions above shall apply accordingly for the related documentations/materials and supplementations as well as further developments of the contract software by prisma; unless differently stipulated within the scope of the customer contract, supplementations and further developments of the contract software shall not be owed by prisma.

### § 3 Safeguards, Right of Audit

- 1. By means of suitable measures, the customer shall safeguard, to the best of its ability, the contract software as well as the access data for (online) access against any use by unauthorized third parties. In particular, all copies of the contract software as well as the access data shall be safeguarded at a protected location.
- 2. Upon prisma's request, the customer shall enable prisma to verify the proper use of the contract software, especially in terms of whether the customer uses the contract software qualitatively and quantitatively within the scope of the licenses acquired by it. In this respect, the customer shall provide information for prisma, allow inspection of relevant documents and information material as well as enable a review of the utilized hardware and software environment by prisma or by an expert nominated by prisma. prisma may perform the audit or have it performed at the customer's premises and its regular business hours. prisma shall take care that the customer's business operation will be disturbed as little as possible by the auditing activity on location. If the audit results in an excursion of the acquired number of licenses by more than 2 % or if it shows any other, non-contractual use, the customer shall bear the cost of the audit; otherwise, prisma shall bear the cost.

### § 4 Liability by prisma

- 1. prisma shall be liable without limitation
  - in case of intent or gross negligence;
  - for injury to life, limb or health;
  - according to the regulations of the product liability law; as well as
  - within the scope of a warranty assumed by prisma.

2. In case of the slightly negligent breach of an obligation which is crucial for attainment of the contractual purpose (cardinal obligation), liability by prisma shall be limited in its amount to the damage which is foreseeable and typical according to the type of the transaction or business in question.
3. Any further liability by prisma shall not exist.
4. The above indicated limitation of liability shall also apply for the personal liability of prisma's employees, representatives and business organs or bodies.

## § 5 Claims by Third Parties

1. If third parties claim rights versus the customer with regard to the contract software which are contrary to the software's contractual use, prisma shall take all necessary actions to defend the contract software against the alleged rights by third parties. Customer shall immediately notify prisma in writing about the assertion of such rights by third parties and issue to prisma all powers of attorney and grant prisma all powers which are required to defend the contract software against the asserted rights by third parties.
2. As far as there are defects of title, prisma shall be entitled, at its discretion, to eliminate (i) by means of legitimate actions the rights of third parties which impair the contractual use of the software or (ii) their assertion by the third party; or (iii) to change the contract software in such a way, or replace it, so that it no longer infringes third party rights if and as far as the owed functionality of the contract software is not significantly impaired thereby.

## § 6 Software Escrow

1. Upon the customer's request, prisma shall be obligated to submit to the customer a binding written offer for the escrow of the contract software or its software codes with a professional provider (escrow agent) at normal market conditions.
2. The customer shall bear all costs of software escrow.

## § 7 CustomerSource; System Support

1. The customer shall be entitled to use Microsoft's CustomerSource in accordance with the contractual agreements. **Annex 3** includes instructions for access and registration with CustomerSource.

2. Upon the customer's request, prisma shall conclude, with the customer, a separate contract about system support and maintenance with regard to the contract software, including Microsoft Dynamics NAV which includes remote support.

## § 8 Final Provisions

1. The customer may transfer claims against prisma to third parties only after written consent by prisma. Furthermore, the customer may only offset vis-à-vis prisma with uncontested or legally bindingly established claims.
2. Any changes or supplements to this Agreement shall require the written form. This shall also be applicable for the change or cancellation of this clause. Electronic documents in text form do not meet the requirement of written form.
3. This Agreement shall be governed by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
4. Nuremberg shall be the place of performance. Nuremberg shall be the exclusive place of jurisdiction if each party is a merchant, or legal entity under public law or has no general place of jurisdiction in Germany.
5. Should individual provisions of this Agreement be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall endeavor to find, instead of the invalid provision, a valid provision which comes closest to the economic meaning or interest of the invalid provision.
6. This License Agreement shall have priority in case of any conflict of provisions in this License Agreement and prisma's General Commercial Terms and Conditions.