

## Software License Agreement

This Software License Agreement (**Agreement**) is made by and between Proceq S.A. (**Proceq**) and the person, company or entity installing, copying, and/or using the Software offered hereunder (**Customer**).

By installing, copying and/or using the Proceq's Software the Customer hereby confirms its acceptance of the terms and conditions of this Agreement.

### 1. Subject

- 1.1 Proceq offers the following for use: Software for data transfer, display, processing and / or similar functions for Proceq testing instruments between computer platforms such as Mobile Devices, Notebooks, Workstations and similar third party devices, comprising the code, all the programs and routines used, the supplied menus, audio and video files, text pages and graphics (**Software**). The Software, supported operating systems and system requirements are specified in the relevant product descriptions. The Software will be installed by the Customer.
- 1.2 During the subscription term, the Customer may obtain from Proceq, at Proceq's sole discretion, supplements, updates or information relating to the Software, as long as the Customer is in compliance with the terms and conditions of this Agreement and current in all its obligations hereunder, including without limitation, payment of any subscription fee, if applicable.

### 2. Delivery

- 2.1 The Software is delivered by data media (USB-Stick or CD ROM) or by electronic means via data networks (the Internet) or third party download platforms. Proceq makes no guarantee for the availability of the networks or download platforms, or for the correct transfer of the Software.

### 3. License

- 3.1 Buying a Proceq testing instrument enables the Customer to use the Software and corresponding license. The Customer acquires the non-exclusive and non-assignable right to use the Software during the term and subject to the terms and conditions set forth in this Agreement and provided the Customer has fulfilled all of its obligations and liabilities towards Proceq (in particular but not limited to any payments for testing instrument components either ordered or delivered).
- 3.2 The Customer may not:
  - a) use the Software other than as specified in this Agreement and it shall not and it shall take any necessary steps to prevent any unauthorized exploitation or copying of the Software;
  - b) give third parties access to the Software on its servers or workstations or by way of data media;
  - c) give or lease the Software to third parties for their use;
  - d) it may not and shall not permit that any third party transfer the Software to a different programming language or to another operating system, adapt or make error corrections, reverse engineer, reverse compile, reverse assemble, modify or incorporate the software, in whole or in part, in any other program.
- 3.3 The Customer acknowledges and agrees that the Software, including without limitation, any information and update thereof, contains proprietary content, information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that the Customer will not use such proprietary content, information or materials in any way whatsoever except for permitted use of the Software.

- 3.4 The Customer acknowledges and agrees that any and all rights, title and interest in and to, including but not limited to any intellectual property rights, to the Software itself belongs and shall remain with Proceq and the Customer shall have no rights in and to the Software other than the right to use it in accordance with the terms of this license.
- 3.5 Proceq reserves all rights not expressly granted to the Customer.
- 3.6 The Proceq general sales and supply conditions shall apply to the purchase of a Proceq testing instrument.
- 3.7 The Customer shall during the term of this licence and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this licence) nor without the prior written consent of Proceq (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature which may become known to the Customer from Proceq, unless that information is public knowledge or already known to the Customer at the time of disclosure, or subsequently becomes public knowledge other than by breach of this licence, or subsequently comes lawfully into the possession of the customer from a third party. The Customer may not use any such information provided by Proceq or obtained by the Customer in connection with this agreement or its subject matter to create any software whose expression is substantially similar to that of the software nor use such information in any manner which would be restricted by any copyright subsisting in it.

#### **4. Definitive installation, duration or end of the license**

- 4.1 The license for the Software acquired from Proceq remains in force and effect for as long as the Customer complies with and fulfils all its obligations under this Agreement and Proceq general sales and supply conditions, to the applicable extend.
- 4.2 This Agreement is effective immediately upon installation, copying or use of the Software (**Effective Date**).
- 4.3 The license granted of the Software hereunder shall be terminated in the event that the Customer violates any of the terms and conditions set forth hereunder. For the avoidance of doubt, in case of termination clause 5 governing Proceq's liability shall remain in full force and effect unchanged.

#### **5. No warranty and disclaimer; Limitation of Liability**

- 5.1 The subject of the license is the Software that Proceq delivers to the Customer in accordance with clause 2 hereto, in the version as delivered and in the form as received by the Customer. The Software provided by Proceq to the Customer and its license are provided on "as is" basis without any warranty and the Customer's use thereof is at its own risk and integrity. Proceq does not make and hereby specifically disclaims any and all express or implied warranties, including but not limited to the implied warranties of merchantability and fitness for a particular use or purpose, non-infringement, title or other warranty arising under regulations or otherwise law, or from course of dealing, usage, or performance, to the extent permitted by applicable law.
- 5.2 The Customer expressly acknowledges and agrees that the use of the Software is at its sole risk and that the entire risk at satisfactory quality, performance, accuracy and effort is with the Customer. In no event shall Proceq be liable for any direct, indirect, incidental, special, exemplary or consequential damages however caused or shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise

howsoever. Proceq accepts no responsibility for any properties of the Software, either general or in terms of its suitability for any particular purpose. Proceq shall also not be liable for any damage suffered by the Customer or third party irrespective of whether the damage is the direct or indirect consequence of installing or using the Software or is in any way connected with installation or use of the Software. In particular and without limitation, Proceq shall not be liable for loss of earnings, profit or savings, or for loss of or damage to software or data. This applies even if Proceq is expressly made aware of such risks. Exclusion of liability applies in particular, but without limitation, to all direct, indirect or consequential damage that may arise to the Customer because the Software fails to function properly or at all for whatever reason, to the extent permitted by applicable law.

**6. Amendments**

6.1 Proceq reserves the right to, at its own discretion, amend the terms and conditions set forth in this Agreement without any prior consent of the End User.

**7. Notices**

7.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered per email to the following email address [software@proceq.com](mailto:software@proceq.com).

**8. Governing law and Jurisdiction**

8.1 This Agreement shall be exclusively governed by and construed in accordance with the substantive laws of Switzerland, excluding its conflict of laws principles and the UN Convention on Contracts for the International Sale of Goods.

8.2 All disputes arising out of or in connection with this Agreement, including without limitation disputes on its conclusion, binding effect, amendment and termination, are to be resolved exclusively by the ordinary courts of the Canton of Zurich.