

These terms and conditions, the attendant proposal, quotation or acknowledgment, and all documents incorporated by reference therein, binds Proconex, Inc. (Seller), and the buyer (Buyer), and constitutes the entire agreement (Agreement) between Buyer and Seller for the provision of services (Services) and/or the sale of goods (Goods) including (except as provided in Section 12) firmware incorporated therein.

1. **ACCEPTANCE.** Acceptance by Seller of any purchase order, offer, or similar document issue by Buyer's is expressly conditioned upon Buyer's assent to the terms contained herein. Buyer shall indicate assent by any one of the following three (3) ways: (a) failing to notify Seller within five (5) days of receipt of these terms of any objections to the terms contained herein, (b) receiving Seller's Goods or accepting the benefit of Seller's Services, or (c) returning a signed or initialed copy of this form to Seller. These terms and any contract signed by Seller in which they are incorporated constitute the entire agreement between Buyer and Seller, superseding any other oral or written agreements, including all standard terms and conditions of Buyer's purchase order. Buyer expressly accepts all terms and conditions contained on Seller's acknowledgement and invoice, regardless of contrary expressions by Buyer. All purchase order(s) issued by Buyer are for convenience only and to state the particulars of the transaction (e.g., description of Goods or Services, quantity, time of delivery, etc.). Seller reserves the right to accept such an order without such acceptance being construed as acceptance of terms or conditions contained in Buyer's orders which are contrary or in addition to the terms and conditions provided by Seller, all of which are hereby objected to and rejected by Seller. No change of the terms and conditions stated herein shall be made without Seller's written consent, signed by an authorized representative of Seller.
2. **PRICES:** Unless otherwise specified by Seller, Seller's price for the Goods and/or Services shall remain in effect for thirty (30) days after the date of Seller's quotation or acceptance of the order for the Goods/Services, whichever is delivered first, provided an unconditional, complete authorization for the immediate manufacture and shipment of the Goods and/or provision of Services pursuant to Seller's standard order processing procedures is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods/Services to Seller's price in effect for the

Goods/Services at the time the order is released to final manufacture. Notwithstanding any of the foregoing to the contrary, the price for Goods/Services sold by Seller, but manufactured by others, shall be Seller's price in effect at the time of shipment to Buyer.

3. **DELIVERY; DOCUMENTATION; RETURNS:** All shipping dates are approximate and are based upon Seller's prompt receipt of all necessary information from Buyer to properly process the order. Notwithstanding any provisions to the contrary in this or other documents related to this transaction, and regardless of how price was quoted, whether FOB, FAS, CIF or otherwise, legal title to the Goods and risk of theft, damage, destruction or other loss thereto shall transfer to Buyer upon delivery to the freight carrier at Seller's shipping point. Seller shall provide Buyer with that data/documentation which is specifically identified in the quotation. If additional copies of data/documentation or non-standard data/documentation are to be provided by Seller, they shall be provided to Buyer at Seller's price then in effect. Goods are not subject to return, and may only be returned after obtaining Seller's written authorization. Returned Goods must be in good condition, with complete identification, and shipped freight prepaid in accordance with Seller's instructions. Seller may, in its sole discretion, impose a cancellation or restocking charge in accordance with the Proconex Return and Cancellation Policy found at [Click here for our RMA policy.](#)
4. **EXCUSE OF PERFORMANCE:** Seller shall not be liable for delays in performance or for non-performance due to acts of God, war, riot, fire, pandemic, epidemic, terrorism, labor trouble, unavailability of materials or components, explosion, accident, compliance with governmental requests, laws, regulations, orders or actions, or unforeseen circumstances or causes beyond Seller's reasonable control.
5. **TERMINATION AND SUSPENSION:** Buyer may terminate or suspend its order for any or all of the Goods/Services covered by the Agreement, provided that Buyer gives Seller reasonable advance written notice of such termination or suspension and reimburses Seller for all losses, damages, costs and expenses arising from such termination or suspension, including, but not limited to reasonable storage charges, interest and any other charge

passed through to Seller from third parties. Seller may terminate this Agreement immediately if Buyer materially breaches this Agreement and fails to cure such breach within ten (10) days of receiving written notice from Seller of such breach. In the event of a filing of a petition for relief under the United States Bankruptcy Code or any similar petition under the insolvency laws of any jurisdiction by or against Buyer, or Buyer discontinues the business operations relevant to this Agreement, then Seller may immediately terminate this Agreement upon written notice.

6. **LIMITED WARRANTY:** Subject to the limitations contained in Section 6 herein, Seller warrants that (a) the licensed firmware that Seller created that is embodied in the Goods will execute the programming instructions provided by Seller, (b) the Goods manufactured by Seller will be free from defects in materials or workmanship under normal use and care until the expiration of the applicable warranty period, and (c) it will perform the Services in a professional, workmanlike and timely manner in accordance with commercially reasonable industry standards and that the Services shall be completed in accordance with the applicable agreed to specifications. Goods are warranted for twelve (12) months from the date of initial installation or from the date of shipment by Seller, whichever period expires first. Consumables and Services are warranted for a period of 90 days from the date of shipment or completion of the Services. Products purchased by Seller from a third party for resale to Buyer or included as components in the Goods ("Resale Products") shall carry only the warranty extended by the original manufacturer. Buyer agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products and coordinating claims under the original manufacturer's warranty. If Buyer discovers any warranty defects and notifies Seller thereof in writing during the applicable warranty period, Seller shall, at its option, correct any errors that are found by Seller in the firmware or Services or repair or replace F.O.B. point of manufacture that portion of the Goods or firmware found by Seller to be defective, or refund the purchase price of the defective portion of the Goods/Services. Failure by Buyer to give such written notice of defects within the applicable time period shall be deemed an absolute and unconditional waiver of Buyer's claim for such defects. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power sources or environmental conditions, accident, misuse,

improper installation, modification, repair, storage or handling, or any other cause not the fault of Seller are not covered by this limited warranty, and shall be at Buyer's expense. Seller shall not be obligated to pay any costs or charges incurred by Buyer or any other party except as may be agreed upon in writing in advance by Seller. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel and representatives for site travel and diagnosis under this warranty clause shall be borne by Buyer unless accepted in writing by Seller. Goods repaired and parts replaced by Seller during the warranty period shall be in warranty for the remainder of the original warranty period or ninety (90) days, whichever is longer. This limited warranty is the only warranty made by Seller and can be amended only in a writing signed by Seller. THE WARRANTIES AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE. THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO ANY OF THE GOODS OR SERVICES. SELLER SHALL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE RESULTING FROM SELLER'S USE OF OR COMPLIANCE WITH DESIGNS, PROCESSES, FLOW CHARTS, BUSINESS RULES, SPECIFICATIONS, INFORMATION, INSTRUCTIONS, AND REPRESENTATIONS OF OPERATING CONDITIONS OR OTHER DATA SUPPLIED BY BUYER ("BUYER DATA").

7. **LIMITATION OF REMEDY AND LIABILITY:** SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE. THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE OF THE SPECIFIC GOODS MANUFACTURED OR SERVICES PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. THE TERM "CONSEQUENTIAL DAMAGES" SHALL INCLUDE BUT NOT BE LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE OR USE AND

COSTS INCURRED INCLUDING WITHOUT LIMITATION FOR CAPITAL, FUEL AND POWER, AND CLAIMS OF BUYER'S CUSTOMERS.

8. **PATENTS:** Subject to the limitations contained in Section 6, Seller shall defend any suits brought against Buyer based on a claim that use of the Goods manufactured by Seller or use of the Software constitutes an infringement of a valid patent of the United States, and shall pay any damages awarded therein against Buyer, provided that Buyer: promptly notifies Seller in writing of the filing of such suit or the threat thereof; permits Seller to control completely the defense or compromise of such claim of infringement; and provides all reasonable assistance and cooperation requested by Seller for the defense of such suit. In the event that only the Goods manufactured by Seller are held to be infringing in such suit and their use is enjoined, Seller shall, at Seller's option and expense procure for Buyer the right to continue using the Goods, replace them with a non-infringing product or modify them so they become non-infringing. Buyer agrees that Seller shall not be liable for infringement, and that Buyer shall fully defend and indemnify Seller therefor, if infringement is based upon the use of Goods in connection with goods not manufactured by Seller or in a manner for which the Goods were not designed by the Seller or if the Goods were not designed by the Seller or if the Goods were designed by the Buyer or were modified by or for the Buyer in a manner to cause them to become infringing, or to the extent the alleged infringement arises from Seller's compliance with or use of Buyer Data.
9. **CONFIDENTIAL INFORMATION:** For purposes of this Agreement, "Confidential Information" means any information that Seller or Seller's vendors or suppliers discloses to Buyer in connection with this Agreement including, but not limited to, information that is marked as confidential; information that must be treated confidentially under applicable law; information that Buyer should reasonably understand to be confidential; Seller's financial, business and customer information. Unless Seller authorizes in writing or this Agreement provides otherwise, Buyer shall retain Confidential Information in confidence, take all reasonable precautions to protect its confidentiality (in any case, no less than Buyer takes to protect its own confidential information), and not disclose it to, or use it for the benefit of, any third party except as may be required by law. Buyer shall disclose Seller's Confidential Information only to its employees or contractors who need to know it in connection with this Agreement. Confidential Information does not include any information that: (i) is in the public domain by no fault of Buyer; (ii) Buyer developed independently without knowledge of the Confidential Information; (iii) is or comes into Buyer's possession without use or disclosure restrictions; or (iv) can be demonstrated as being previously known to Buyer.
10. **INSTALLATION:** Buyer shall be responsible for receiving, storing, installing, starting up and maintaining all Goods. Seller shall provide a quotation for services to assist Buyer in these functions if requested.
11. **TAXES:** Any tax or governmental charge or increase in same hereafter becoming effective increasing the cost to Seller of producing, selling, or delivering the Goods or of procuring material used therein, and any tax now in effect or increase in same payable by the Seller because of the manufacture, sale or delivery of the Goods, may at Seller's option, be added to the price herein specified.
12. **TERMS OF PAYMENT:** Subject to the approval of Seller's Credit Department, terms are F.O.B. shipping point, net 30 days from date of Seller's invoice in U.S. currency, except for applicable milestone payments set forth below, or export shipments for which Seller may require other arrangements. If any payment owed to Seller hereunder is not paid when due, it shall bear interest, at a rate of 1.5% per month or at the maximum rate permitted by law, from the date on which it is due until it is paid. Seller shall have the right, among other remedies, either to terminate the Agreement or to suspend further deliveries under this and/or other agreements with Buyer in the event Buyer fails to make any payment hereunder when due. Buyer shall be liable for all expenses attendant to collection of past due amounts, including, but not limited to, attorneys' fees. Buyer waives the right to dispute any invoiced amount(s) unless Buyer provides Seller with notice of the dispute (with detailed reasons) within 10 days of the invoice date. All undisputed amounts are payable as set forth above.
13. **SOFTWARE AND FIRMWARE:** Notwithstanding any other provision herein to the contrary, Seller or applicable third party owner shall retain all rights of ownership and title in its respective firmware and software, including all copyrights relating to such firmware and software and all copies of such firmware and software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, royalty free license to use firmware and software, and copies of firmware and software, incorporated into the Goods only in conjunction with such Goods and only at the Buyer's plant site where the Goods are first used. Buyer may negotiate with Seller separate licenses to use such copies and firmware and software at other plant sites. Buyer's use of certain

firmware (as specified by Seller) and all other software shall be governed exclusively by Seller's and/or third party owner's end user license agreements or other applicable license terms.

14. **MILESTONE PAYMENTS:** Unless otherwise provided in Seller's written quotation, periodic milestone payments shall be made by Buyer when the price of the Goods exceeds \$100,000. In such cases, invoices shall be issued by Seller and paid by Buyer based on the following milestones: Milestone 1: 30% of price upon acceptance of order by Seller. Milestone 2: 30% of price upon release by Seller of approved bills of material to manufacturing for assembly. Milestone 3: 40% of price upon shipment of the Goods by Seller. Seller reserves the right to designate additional Milestones where the Agreement provides for engineering services in excess of \$50,000.
15. **BUYER DATA:** To the extent Buyer Data is used by Seller in the preparation of Seller's quotation, the selection, design or production of the Goods or the provision of Services, Buyer and not Seller shall be wholly responsible for the Buyer Data and any effects resulting from the use thereof. Seller shall be absolutely entitled to rely on the accuracy and validity of the Buyer Data and shall be under no obligation whatsoever to detect any errors in or offer improvements to the Buyer Data unless as a necessary incident of the Services. Without limiting the foregoing, if actual operating conditions or other conditions differ from those represented by Buyer in the Buyer Data, any warranties or other provisions contained herein which are affected by such conditions shall be null and void, unless otherwise mutually agreed upon in writing.
16. **EXPORT/IMPORT:** Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which items may be supplied, will apply to its receipt and use of Goods and Services. In no event shall Buyer use, transfer, release, import, export or reexport Goods in violation of such applicable laws, regulations, orders or requirements.
17. **INDEMNIFICATION:** Buyer will defend, indemnify, defend and hold harmless Seller and its employees, officers and directors (individually and collectively, the "Indemnified Parties") from and against all claims, liabilities, losses, damages, and expenses (including reasonable attorneys' fees), of every character whatsoever, arising out of or resulting from (a) any bodily injury including, without limitation, death, sustained by any person (including, without limitation, Seller's employees, independent

contractors or subcontractors) to the extent caused by Buyer or Buyer's employees, independent contractors or subcontractors in connection with the Goods and/or Services, (b) economic losses or property damage suffered by Buyer, Buyer's customers, or any other person to the extent arising out of Seller's use of or compliance with Buyer Data in the production of Goods or provision of Services, or any other use by Seller of Buyer Data. Buyer or Buyer's employees, independent contractors or subcontractors in connection with the Goods and/or Services. Buyer shall not settle any such claim without Seller's prior written approval, or (c) any other loss or damages caused by Buyer's integration of the Goods with Buyer's own products or services.

18. **EMPLOYMENT OF SELLER'S EMPLOYEES:** Buyer recognizes the considerable investment Seller has in its employees and, therefore, agrees not to hire or employ, directly or indirectly, any of Seller's employees assigned to perform Services for Buyer during the period of their employment by Seller or during the period of this Agreement, whichever is greater, and for a period of two (2) years thereafter. It is further agreed that any breach of this Agreement will result in immediate and irreparable injury to Seller. In the event of any such breach or threatened breach, Seller shall be entitled to any remedies, available to it at law or equity, including but not limited to an injunction restraining Buyer and liquidated damages of one hundred and fifty thousand dollars (\$150,000). The parties agree that the liquidated damages amount is a reasonable estimate of Seller's damages and not a penalty.
19. **INSURANCE:** Buyer shall maintain, while Seller is performing Services at the Buyer's site, the following insurance: (a) worker's compensation insurance in the statutory amount including broad form all states endorsement and employers' liability of the state in which the Services are to be rendered for all of Seller's employees employed at the Buyer's site; (b) comprehensive general liability in amounts not less than: (i) bodily injury or death, \$1,000,000 each occurrence and \$1,000,000 aggregate; (ii) umbrella liability, \$3,000,000 each occurrence and \$3,000,000 aggregate. Buyer will, upon request, provide Seller with certificates of insurance.
20. **GOVERNING LAW AND VENUE:** The validity, performance and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws principles. Buyer and Seller agree that the state courts of Montgomery County, Pennsylvania and the United States District Court for the Eastern District of Pennsylvania shall have exclusive jurisdiction to hear

and determine any claims or disputes between the parties hereto pertaining directly or indirectly to this agreement and all documents, instruments and agreements executed pursuant hereto, or to any matter arising therefrom.

- 21. NOTICES:** Any notices to be given under this Agreement will be in writing. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt or (iii) if sent by certified or registered mail, within five days of deposit in the mail.
- 22. GENERAL PROVISIONS:** (a) Buyer shall not assign its rights or obligations under the Agreement without Seller's prior written consent. (b) No action, regardless of form, arising out of transactions under the Agreement, may be brought by either party more than two (2) years after the cause of action has accrued. (c) Any modification of these terms and conditions must be set forth in a written instrument signed by a duly authorized representative of Seller. (d) The parties do not intend that this Agreement create any rights in or confer any benefits to anyone other than Seller and Buyer. (e) If Seller provides the Goods and/or performs the Services at sites not belonging to Seller or its affiliates(s), then Buyer will not ask Seller or Seller's personnel to enter into any agreement that imposes, waives, releases, indemnifies or otherwise limits or explains any rights or obligations in respect of Seller or Seller's personnel. Any such agreement is void. However, Seller's personnel will comply with Buyer's reasonable site health safety, security and environmental rules if copies of such rules are provided to Seller's personnel prior to starting work at such site. (f) This Agreement constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by the acknowledgment or acceptance of purchase orders or other forms containing terms or conditions at variance with or in addition to those set forth herein. (g) Nothing in this Agreement shall prohibit Seller from using any independent contractors in providing the Goods and/or performing the Services hereunder, provided Seller remains responsible for the performance of such independent contractors. (h) No failure to insist upon strict compliance with the terms of this Agreement shall

constitute a waiver, and no waiver of a breach of any provision of this Agreement shall constitute a waiver of any other breach, or of such provision. (i) UNLESS OTHERWISE SPECIFICALLY PROVIDED IN SELLER'S QUOTATION, GOODS AND SERVICES HEREUNDER ARE NOT SOLD OR INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS and if Goods and Services supplied hereunder are to be used in nuclear applications, including, without limitation, any power generation facility, Buyer fully indemnifies Seller pursuant to Seller's "Special Nuclear Terms of Sale" a copy of which is available upon request. Buyer (i) accepts Goods and Services in accordance with the restriction set forth in the immediately preceding sentence, AND (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users. (j) The 1980 United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. (k) If any provision of the Agreement is invalid under any statute or rule of law, such provision, to that extent only, shall be deemed to be omitted without affecting the validity of the remainder of the Agreement.

- 23. INDEPENDENT CONTRACTOR:** In performing the Services and/or providing the Goods, Seller will at all times constitute an independent contractor and not an employee of Buyer. Seller will exercise its own reasonable discretion in determining how Seller provides the Goods and/or performs the Services.