

# PROCONEX

## WEB SITE TERMS OF USE

### Introduction

The following terms and conditions (the “**Website Terms**”) constitute a binding agreement between you and Proconex, Inc. (“**Proconex**,” “we,” or “us”) with respect to the use of the website at <http://proconexdirect.com> and its subdomains, including any customer, vendor or other portals we may maintain in connection with that website and any information, data, tools, and applications in or at those domains and any subdomains (collectively, the “**Website**”). The term “**Website**” includes Content (as defined in Section 3 below). All references in these Website Terms to “you” or “your” shall refer to the users of the Website and any business they represent

### 1. Acceptance and Access

- (a) Your use of the Website constitutes your agreement to be legally bound by these Terms and your consent to the practices it describes. If you do not agree to be legally bound by these Terms, you should not use the Website.
- (b) Proconex reserves the right to
- limit your ability to use this Website or any portion of it;
  - modify or discontinue, temporarily or permanently, your access to this Website or any portion of it at any time with or without notice;
  - limit the times and periods during which this Website or any portion of it access can take place; and
  - review the activities of users of this Website or any portion of it to ensure they are meeting the relevant terms and conditions of use.

### 2. Prohibitions

- (a) You agree not to:
- Use or access the Website for any fraudulent or unlawful purpose;
  - Use or access the Website to impersonate any person or entity;
  - Interfere with or disrupt the operation of the Website or access to it;
  - Transmit or otherwise make available in connection with the Website or access to it any virus, worm, Trojan horse, time bomb, spyware or any other harmful code, file or program;
  - Restrict or inhibit the ability of any other person to access or use the Website;
  - Modify, adapt or translate any portion of the Website;

- Remove, obscure or modify any copyright, trademark or other proprietary rights from the Website.
- Collect information from the Website using an automated software tool or manually on a mass basis;
- use automated means to access the Website, or gain unauthorized access to the Website or to any account or computer system connected to the Website;
- obtain, or attempt to obtain, access to areas of the Website or our systems that are not intended for access by you;
- circumvent or attempt to circumvent any measure effected by Proconex to protect or to prevent or restrict access to the Portal.

### **3. Ownership and Content**

Any graphics, text, catalogues, instructions, images, spreadsheets, invoices, and manuals, and any CAD, audio or video files and/or other sounds, videos, and other materials you may view on, access through, or are otherwise related to the Website (collectively, the “**Content**”) are owned by Proconex and its licensors and are protected under copyright, trademark, and other applicable United States and international laws and treaties. Without limiting the foregoing, the trademarks, service marks, and logos displayed on the Website are registered and unregistered marks of Proconex and its licensors. As between you and Proconex, Proconex is and shall remain the sole owner of the Website and the Content, including, without limitation, all patents, copyrights, trademarks, trade secrets, and other intellectual property and proprietary rights therein and thereto.

- (a) Content may not be copied, downloaded, stored in a retrieval system for any purpose, reproduced, adapted, duplicated, republished, uploaded, posted, transmitted, modified, communicated, sold or traded, except as otherwise provided in these Website Terms or any terms applicable to specific portals or other portions of the Website, or with the express written permission of Proconex. If such permission is granted, you agree to keep intact all copyright and other proprietary notices on any such downloaded or printed materials.

### **4. Security**

We maintain physical, electronic, and procedural safeguards to help guard information and the security of our systems. For security purposes and to ensure that our services remain available to all users, we monitor network traffic. This monitoring is done to identify unauthorized attempts to upload or change information, or to otherwise cause damage.

### **5. “Cookies, ”Advertisers, etc.**

- (a) The servers used to operate the Website may place “cookies” on your computer to allow you to use the Website and to personalize your experience. A “cookie” is a small piece of data that can be sent by a web server to your computer, which then may be stored by your browser on your computer’s hard drive. Cookies allow us to recognize your computer while you are on the Website, help customize your online experience and make it more convenient for you, as well as help us serve promotions/ads based on past visits and preferences. Cookies are also useful

in allowing more efficient log-in for users, tracking transaction histories and preserving information between sessions. The information collected from cookies may also be used to improve the functionality of the Website.

- (b) We may use remarketing with Google Analytics or other Services to advertise online. Third-party vendors, including Google, may show ads on sites across the Internet. Proconex and third-party vendors, including Google, use cookies to inform; optimize; serve ads based on your past visits to our Website; as well as to report how your ad impressions, other uses of ad services, and interactions with these ad impressions and ad services are related to your site visits. We use data from Google's interest-based advertising or third-party audience data (such as age, gender, and interests) with Google Analytics to optimize ads and improve Website usability for a target audience.
- (c) Most web browser applications (such as Microsoft Edge<sup>®</sup>, Google Chrome<sup>®</sup>, and Firefox) have features that can notify you when you receive a cookie or prevent cookies from being sent. Visitors can customize settings and opt out of Google's use of cookies by visiting Google's Ads Settings. If you disable cookies, however, you may not be able to use certain personalized functions of the Website.

## **6. Disclaimers**

- (a) You understand that we cannot and do not guarantee or warrant that Content available for viewing or downloading from the internet or the Website will be free of viruses or other destructive code. You are responsible for implementing sufficient procedures and checkpoints to satisfy your particular requirements for anti-virus protection and accuracy of data input and output, and for maintaining a means external to our site for any reconstruction of any lost data. TO THE FULLEST EXTENT PROVIDED BY LAW, WE WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY A DISTRIBUTED DENIAL-OF-SERVICE ATTACK, VIRUSES, OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT YOUR COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA, OR OTHER PROPRIETARY MATERIAL DUE TO YOUR USE OF THE WEBSITE OR ANY CONTENT SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE OR TO YOUR DOWNLOADING OF ANY MATERIAL POSTED ON IT, OR ON ANY WEBSITE LINKED TO IT.
- (b) YOUR USE OF THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE AT YOUR OWN RISK. THE WEBSITE, ITS CONTENT, AND ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER PROCONEX NOR ANY PERSON ASSOCIATED WITH PROCONEX MAKES ANY WARRANTY OR REPRESENTATION WITH RESPECT TO THE COMPLETENESS, SECURITY, RELIABILITY, QUALITY, ACCURACY, OR AVAILABILITY OF THE WEBSITE. WITHOUT LIMITING THE FOREGOING, NEITHER PROCONEX NOR ANYONE ASSOCIATED WITH PROCONEX REPRESENTS OR WARRANTS THAT THE WEBSITE, ITS CONTENT, OR ANY SERVICES OR ITEMS OBTAINED THROUGH THE WEBSITE WILL BE ACCURATE, RELIABLE, ERROR-FREE, OR UNINTERRUPTED, THAT DEFECTS WILL BE CORRECTED, THAT THE WEBSITE OR THE SERVER THAT MAKES IT AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT THE WEBSITE OR ANY SERVICES OR CONTENT OBTAINED THROUGH THE WEBSITE WILL OTHERWISE MEET YOUR NEEDS OR EXPECTATIONS.

- (c) TO THE FULLEST EXTENT PROVIDED BY LAW, PROCONEX HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR PARTICULAR PURPOSE.
- (d) THE FOREGOING DOES NOT AFFECT ANY WARRANTIES THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **7. Limitation on Liability**

- (a) TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL PROCONEX, ITS AFFILIATES, OR THEIR LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OFFICERS, OR DIRECTORS BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE WEBSITE, ANY WEBSITES LINKED TO IT, ANY CONTENT ON THE WEBSITE OR SUCH OTHER WEBSITES, INCLUDING ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY, PAIN AND SUFFERING, EMOTIONAL DISTRESS, LOSS OF REVENUE, LOSS OF PROFITS, LOSS OF BUSINESS OR ANTICIPATED SAVINGS, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, AND WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT, OR OTHERWISE, EVEN IF FORESEEABLE.
- (b) THE LIMITATION OF LIABILITY SET OUT ABOVE DOES NOT APPLY TO LIABILITY RESULTING FROM OUR WILLFUL MISCONDUCT OR ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

#### **8. External Links**

- (a) The Website may be linked to other websites not maintained by us. We do not control and are not responsible for the content of and policies governing use of those websites not maintained by us. The inclusion of any link to such websites does not imply approval of or endorsement by us of the websites or the content thereof. If you access any such websites, you do so entirely at your own risk.
- (b) We do not review the sites linked to or from our Website, and we are not responsible for the content or privacy practices of these other third-party websites. We make no representations or warranties, either express or implied, in relation to the goods or services received through or from these links; or the content, completeness or accuracy of these links or the sites linked to our Website.

#### **9. Responsibility; Indemnity**

- (a) You agree that you are solely responsible for and you hereby agree to defend and indemnify us against any loss or damage which we may suffer arising out of:
- your communications and your use of and access to the Website;
  - any breach of your obligations under these Website Terms,

- any willful, negligent or unlawful act or omission by you in relation to, or in the course of using, the Website,
- your violation or alleged violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right;
- your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances or orders; or
- any misrepresentation made by you.

## **10. Changes to Website Terms**

- (a) We may revise and update these Website Terms from time to time in our sole discretion. The date these Website Terms were last updated is set forth at the end of these Website Terms. All changes are effective 30 days after posting for current users and immediately for new users and apply to all access to and use of the Website thereafter. Your continued use of the Website following the posting of revised Website Terms means that you accept and agree to the changes.
- (b) These Terms constitute the entire agreement between Proconex and you with respect to your use of the Portal. If any provision of these Portal Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Portal Terms, which shall remain in full force and effect.
- (c) No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- (d) These Website Terms do not in any way bind either party to do any business with the other or disclose or update any confidential or other information.
- (e) If any portion of these Website Terms is held by a court of competent jurisdiction to be invalid for any reason, the remainder of this Agreement shall not be deemed invalid but shall remain in full force and effect
- (f) The parties agree that monetary damages may not be an adequate remedy for any breach of these Website Terms by either party and that the aggrieved party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach in addition to all other remedies available to the aggrieved at law or in equity. The parties acknowledge that the aggrieved party can enforce a breach of this Agreement against the offending party or its representatives, and that the offending Party shall be responsible for the acts and omissions of its Representatives under this Agreement as if such acts and omissions were performed (or not performed) by it.

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