

# General Terms and Conditions ProcoliX

## Article 1. Definitions

1. ProcoliX: the company ProcoliX B.V., located at Laan der Verenigde Naties 40 in Dordrecht, and registered with the Chamber of Commerce under file number 27194325.
2. Client: the natural or legal person who has entered into an agreement with ProcoliX, or to whom ProcoliX has issued a quotation.
3. General Terms and Conditions: the provisions set out in this document.
4. Service: the services that ProcoliX will perform for the Client, as described in the quotation.
5. Agreement: the agreement between ProcoliX and the Client under which ProcoliX will carry out the Service.
6. Website: [www.procolix.com](http://www.procolix.com)

## Article 2. Quotation, offer and acceptance

1. ProcoliX will prepare a quotation stating what is included in the Service and what amount will be due upon acceptance. Only the description of the Service as specified in the quotation is binding. Any adjustment to the description of the Service is considered a change to the Agreement.
2. A quotation is non-binding and valid for 14 days after it is sent by ProcoliX, unless otherwise stated in the quotation.
3. The Client must accept the quotation in writing. If the Client fails to do so, but nevertheless agrees with it, or at least creates the impression that ProcoliX is carrying out work under the Agreement, the quotation will be deemed accepted.
4. If the Client accepts the offer electronically, ProcoliX will immediately confirm receipt of the acceptance electronically. As long as this receipt has not been confirmed, the Client may dissolve the Agreement.
5. If it turns out that information provided by the Client is incorrect, ProcoliX has the right to adjust the prices accordingly and, if ProcoliX considers this necessary, to dissolve the Agreement.
6. These General Terms and Conditions always apply to the Agreement, unless expressly agreed otherwise in writing.
7. Any provisions or conditions set by the Client that deviate from or are not included in these General Terms and Conditions are only binding for ProcoliX if and insofar as ProcoliX has expressly accepted them in writing.
8. After acceptance, the Agreement may only be amended with mutual consent. See Article 17 for changes to these General Terms and Conditions.
9. The Agreement comes into effect at the moment ProcoliX receives the Client's written acceptance of the quotation.
10. In case of conflicting provisions in the Agreement, general terms and conditions, or annexes, the following order of precedence applies:
  - the Agreement;
  - any annexes;
  - any concluded Service Level Agreement (SLA);
  - these General Terms and Conditions;
  - any additional conditions.

## Article 3. Execution of the Service

1. After the Agreement has been concluded, ProcoliX will carry out the Service as soon as possible in accordance with the quotation, taking into account the reasonable wishes of the Client.
2. Unless agreed otherwise in writing, ProcoliX guarantees that the Service will be performed to the best of its ability, with due care and professionalism.
3. If proper execution of the Service requires it, ProcoliX has the right to have certain work carried out by third parties. ProcoliX will consult with the Client in good time. Any unexpected additional costs related to this will be charged to the Client, unless agreed otherwise.
4. The Client must do and refrain from doing everything reasonably necessary and desirable to enable timely and proper execution of the Service. In particular, the Client must ensure that all information

indicated by ProcoliX as necessary, or which the Client should reasonably understand to be necessary for performing the Service, is provided to ProcoliX on time and is correct.

5. If part of the Service, ProcoliX will provide the Client with an administrative username and password. With these details the Client has access to an administrative account where all data is available. Through this account the Client can also manage the Service(s) purchased, including the accounts and their possibilities and limitations for individual users, within the limits indicated in the quotation or at another accessible location.

6. Every action taken via the administrative account or an individual user account is considered to be the responsibility and risk of the Client. In case of suspected misuse of an account, the Client must notify ProcoliX as soon as possible so that measures can be taken.

7. ProcoliX has the right to temporarily suspend delivered products and services and/or restrict their use, or to deliver them only in part, if the Client fails to comply with an obligation under the Agreement or acts contrary to these terms and conditions.

#### **Article 4. Changes to the Service**

1. All changes to the Service, whether at the request of the Client or due to circumstances requiring a different execution, will be regarded as additional work if they involve extra costs, or reduced work if they involve fewer costs. These will be invoiced accordingly to the Client.

2. If ProcoliX must carry out more work than agreed, or under more difficult conditions than reasonably could have been known at the time of the Agreement, ProcoliX has the right to charge the resulting extra costs to the Client.

3. The condition for this right is that ProcoliX has informed the Client in time about these circumstances and extra costs. If the Client does not agree with these extra costs, the Client may cancel the unexecuted part of the additional work, without the right to a refund or cancellation of the already performed work.

#### **Article 5. Prices**

1. All prices are, unless stated otherwise, exclusive of VAT and other government-imposed levies.

2. All prices in quotations, on the Website or in other (electronic) materials of ProcoliX are subject to obvious programming and typing errors. No liability is accepted for the consequences of such errors.

3. If the Agreement is a continuing contract, ProcoliX is entitled to increase its rates. ProcoliX will inform the Client at least one month in advance. The Client has the right to terminate the Agreement before the new rates take effect, with one (1) month's notice.

4. ProcoliX may increase prices annually by up to 5% (indexation), or by the inflation rate if that is higher than 5%, without the Client having the right to terminate the Agreement.

5. All costs for ProcoliX resulting from the Agreement will be borne by the Client, provided these are attributable to the Client. .

#### **Article 6. Payment Terms**

1. The Client's payment obligation starts once the Agreement is concluded. For continuing contracts, unless agreed otherwise, payment covers the period starting from the day the Service(s) are made available by ProcoliX.

2. ProcoliX will, unless agreed otherwise, send the Client an invoice in advance. The payment term is 30 days after the invoice date, unless otherwise stated on the invoice or agreed in the Agreement.

3. The Client agrees to electronic invoicing by ProcoliX.

4. ProcoliX offers the Client the option of automatic direct debit. The Client will provide all cooperation needed to set this up.

5. If the Client does not pay on time, they are in default 14 days after the payment term, without further notice. From that point, statutory interest is due on the outstanding invoice.

6. In case of late payment, the Client must fully compensate ProcoliX for all collection costs, both legal and extrajudicial, including lawyer, bailiff and collection agency costs.

7. The claim for payment becomes immediately due if the Client is declared bankrupt, applies for suspension of payment, has assets seized, dies, or if the company is liquidated or dissolved.

8. In these cases ProcoliX also has the right to suspend or terminate the Agreement without notice or court intervention, without liability for damages to the Client.

## **Article 7. Availability of Systems**

1. If the Service (partly) consists of the provision of systems and/or networks of Procolix, Procolix shall make every effort to ensure uninterrupted availability of these systems and networks, and to make access to the data stored by the Client possible.
2. Procolix does not give any guarantee concerning availability, unless otherwise agreed in the quotation or in a Service Level Agreement (SLA) concluded with the Client.
3. Procolix makes regular backups of its own systems, including the application files and databases, unless otherwise agreed in the quotation or in an SLA concluded with the Client. The Client is at all times responsible for making its own backups. In certain cases, Procolix can, against payment, restore a backup at the Client's request. The costs of this will always be communicated to the Client in advance.
4. Procolix shall retain backups for a period of at least one month, unless otherwise agreed in the quotation or in an SLA concluded with the Client.
5. Procolix will make every effort to keep the software it uses up to date. However, Procolix is dependent on its suppliers for this. Procolix is entitled not to install certain updates or patches if, in its opinion, this will not benefit the proper provision of the Service.
6. The Client shall keep its own software (scripts, applications, etc.) up to date. Procolix may provide assistance with this, but the costs involved will always be charged to the Client.
7. Procolix shall not be liable if outdated software of the Client no longer functions as a result of an update performed by Procolix.
8. Procolix shall not be liable for any unavailability if, in Procolix's opinion, the availability of the systems and networks is in danger of being jeopardised by the Client's actions, such as, but not limited to, insufficiently secured systems or misconfigurations, or by changes made by or at the request of the Client.
9. If, in Procolix's opinion, the operation of the computer systems or network of Procolix or third parties and/or service provision via the Internet is endangered, in particular by excessive amounts of e-mail or other data sent, poorly secured systems or activities of viruses, Trojans and similar software, Procolix is entitled to take all measures it reasonably considers necessary to avert or prevent this danger. The costs arising from this, if caused by intent or gross negligence on the part of the Client, will be borne by the Client.

## **Article 8. Hosting and related services**

1. If the Service (also) includes services concerning storage and/or transmission of material provided by the Client to third parties, such as in the case of web hosting or e-mail services, the provisions of this article shall also apply.
2. The Client shall refrain from storing and/or distributing material using the systems of Procolix that is in violation of Dutch law this is for the following but not exclusively:
  - is defamatory, offensive, racist, discriminatory or incites hatred;
  - is erotic or pornographic, unless this is explicitly permitted in the quotation;
  - infringes the rights of third parties, including but not limited to intellectual property rights such as copyright, trademark rights and portrait rights;
  - constitutes a violation of the privacy of third parties, including but not limited to the distribution of personal data of third parties without permission or necessity, or the repeated harassment of third parties with unwanted communications;
  - contains hyperlinks, torrents or similar information of which the Client knows or should know that it refers to material that infringes the rights of third parties;
  - contains unsolicited commercial, charitable or idealistic communications;
  - contains malicious content such as viruses or spyware;
3. The use of Internet Relay Chat (IRC) via the systems and networks of Procolix is prohibited, unless otherwise agreed.
4. The Client shall refrain from hindering other Clients or Internet users or causing damage to the systems or networks of Procolix or other users. The Client is prohibited from starting up processes or programmes, whether or not via the systems of Procolix, of which the Client knows or can reasonably suspect that these will hinder or cause damage to Procolix, its Clients or Internet users. The Client is liable for all damage caused by this.
5. If the Service agreed upon is (also) aimed at the provision of web space of Procolix to the Client for the purpose of making websites accessible to third parties, or the provision of services to third parties in another way, the Client is fully responsible for the use of the Service by those third parties. Any

breaches of these General Terms and Conditions and damage caused by those third parties shall therefore be entirely at the Client's expense and risk.

6. ProcoliX operates a complaints procedure with regard to unlawful content. If a complaint is well-founded, ProcoliX is entitled to remove the material or make it inaccessible. ProcoliX is also entitled to provide the Client's personal data to a complainant or the competent authorities. In this case, ProcoliX will inform the Client.

7. If there is a suspicion of criminal material, ProcoliX is entitled to report this to the police. ProcoliX may in this context hand over all information about the Client and the material concerned to the competent authorities and perform all other acts that these authorities request ProcoliX to do in the context of the investigation.

8. In case of repeated complaints about the material provided by the Client, ProcoliX is entitled to dissolve and/or terminate the Agreement.

9. The Client indemnifies ProcoliX against all legal claims with regard to the data, information, website(s) and the like stored by the Client. ProcoliX is not liable for any damage whatsoever incurred by the Client as a result of ProcoliX's intervention in the context of the complaints procedure, even if the complaint turns out to be unjustified and the material is not unlawful.

10. The Client is obliged to observe the generally accepted rules of conduct on the Internet, as laid down in RFC1855 and subsequent updates.

11. The Client shall not share or transfer the usernames and passwords provided by ProcoliX to third parties without the prior permission of ProcoliX.

12. Any damage or loss arising from negligence or non-compliance with the provisions of these General Terms and Conditions shall be entirely at the Client's expense.

13. The Client grants ProcoliX a perpetual, worldwide, royalty-free licence to store, distribute or reproduce all material uploaded by the Client, insofar as necessary for the performance of the Agreement.

#### **Article 9. Data traffic, storage space and IP addresses**

1. ProcoliX may set a maximum to the amount of storage space and data traffic (the data limit) that the Client may use in the context of the Service.

2. If the Client exceeds the data limit set by ProcoliX, costs for the use above the data limit will be charged. These costs will be charged at the end of the month, in accordance with the amounts for extra data traffic mentioned in the quotation, appendices, or in a Service Level Agreement (SLA) designated as such. For this the Client will receive an invoice. If the Client uses less data than allowed by the data limit, the remaining data traffic cannot be carried over to the next month.

3. In the administrative account (if present) an overview is given of the data traffic used at that moment and/or the storage space used at that moment. This information is leading in the calculation of the costs owed by the Client to ProcoliX with regard to exceeding the data limit or used storage space. If the Client believes that the displayed usage is not in accordance with reality, the Client must contact ProcoliX about this.

4. Data traffic is all incoming and outgoing data traffic added together and is rounded up per thousand Gigabyte (1000 GB), unless agreed otherwise.

5. No liability exists for consequences of not being able to send, receive, store or change data if an agreed limit for storage space or data traffic has been reached.

6. The IP addresses made available to the Client remain under the management of ProcoliX and cannot be taken along in case of a relocation/termination by the Client.

7. ProcoliX has the right at all times to change the IP address or to assign another address to the Client.

#### **Article 10. Reseller activities**

1. If the Service (also) serves the purpose of reselling, re-letting or otherwise making available for payment ("Reselling") products or services of ProcoliX by the Client to its customers, the provisions in this article shall also apply.

2. The Client acts when Reselling in its own name, at its own expense, and at its own risk and is not authorised to conclude agreements for or on behalf of ProcoliX or to create the impression that it is an agent or representative of ProcoliX.

3. The Client is free to determine its offer and prices to its customers, within the limits indicated by ProcoliX in the quotation.

4. The Client must impose at least the same obligations on its customers as ProcoliX imposes on the Client with regard to the provided product(s) or service(s). ProcoliX may require that the Client provides proof of this.
5. Non-payment or late payment by customers of the Client does not release the Client from its payment obligations towards ProcoliX.
6. ProcoliX does not provide direct support to customers of the Reseller.
7. ProcoliX will only contact customers of the Client via the Client, unless ProcoliX has an urgent reason to contact these customers directly or the Client gives permission for direct contact. (Threatening) damage and nuisance to third parties through activities of customers is in any case an urgent reason.
8. The Client is not authorised to use any trade name, brand name, logos or signs of ProcoliX in promotional or commercial communication with the purpose of making use of the goodwill or good name of ProcoliX for customer acquisition by the Client. The Client may however communicate in a businesslike manner that it makes use of products and/or services of ProcoliX.
9. The Client is at all times fully liable for everything its customers do or fail to do via the systems or networks of ProcoliX.
10. In case of dissolution of the Agreement due to breach of contract by the Client, ProcoliX obtains the right to approach, inform, and possibly take over customers of the Client.

#### **Article 11. Service(s) being out of use**

1. ProcoliX has the right to temporarily take the Service or parts thereof out of use for maintenance, adjustment or improvement thereof. ProcoliX will try to have such an outage take place as much as possible outside office hours and will make an effort to timely inform the Client of the planned outage at the contact details of the Client known to ProcoliX and via the Website. However, ProcoliX is never liable for compensation of damage in connection with such an outage. An outage in the context of maintenance, adjustment or improvement of the Service has no influence on the agreed availability (among other things the downtime percentage) of the Service.
2. ProcoliX has the right from time to time to adjust the Service or parts thereof to improve functionality and to correct errors. If an adjustment leads to a substantial change in functionality, ProcoliX will make an effort to inform the Client thereof. In case of adjustments that are relevant for multiple clients, it is not possible to refrain from a certain adjustment for the Client only. ProcoliX is not obliged to compensate any damage caused by such an adjustment.
3. ProcoliX will make an effort in case of unavailability of the Service, due to failures, maintenance or other causes, to inform the Client about the nature and the expected duration of the interruption.
4. In case of force majeure, including in any case failures or outages of the internet, the telecommunication infrastructure, synflood, network attack, DoS or DDoS attacks, power failures, domestic disturbances, mobilisation, war, blockage in transport, strike, lock-out, business disruptions, stagnation in supply, fire, flooding, import and export restrictions and in case ProcoliX is not enabled to deliver by its own suppliers, regardless of the reason, as a result of which fulfilment of the Agreement cannot reasonably be demanded from ProcoliX, the performance of the Agreement will be suspended, or the Agreement will be terminated when the force majeure situation has lasted longer than ninety days, all without any obligation to compensation.

#### **Article 12. Intellectual property rights**

1. All intellectual property rights on all materials, software, analyses, designs, documentation, advice, reports, quotations, as well as preparatory material thereof, developed or made available in the context of the Service, rest exclusively with ProcoliX or its Service Providers.
2. The Client only obtains the user rights and powers that follow from the purport of the Agreement or that are granted in writing, and for the rest the Client shall not reproduce or make public the software or other materials.
3. The Client is not permitted to remove or alter any indication concerning copyrights, brands, trade names or other intellectual property rights from the materials, including indications concerning the confidential character and secrecy of the materials.
4. ProcoliX is permitted to take technical measures to protect the materials. If ProcoliX has secured the materials by means of technical protection, the Client is not permitted to remove or circumvent this protection.
5. Any use, reproduction or disclosure of the materials that falls outside the purport of the Agreement or granted user rights, is considered an infringement of copyright. The Client shall pay an immediately



payable penalty of EUR 10,000 (excluding VAT) per infringing act to ProcoliX, without prejudice to the right of ProcoliX to have its damage compensated by the infringement or to take other legal measures to terminate the infringement.

### **Article 13. Liability**

1. The liability of ProcoliX for direct damage suffered by the Client as a result of an attributable shortcoming in the fulfilment by ProcoliX of its obligations under this Agreement, expressly also including any shortcoming in the fulfilment of a guarantee obligation agreed with the Client, or by unlawful act of ProcoliX, its employees or third parties engaged by it, is limited per event or a series of related events to an amount equal to the fees owed by the Client under this Agreement per year (excluding VAT). In no case however will the total compensation for direct damage amount to more than EUR 1,000 (excluding VAT).
2. Liability of ProcoliX for indirect damage, including consequential damage, lost profits, missed savings, loss of (business) data and damage due to business stagnation, is excluded.
3. Apart from the cases mentioned in Article 13 paragraph 1, ProcoliX has no liability for compensation, regardless of the ground on which an action for compensation would be based. The maximum amount mentioned in Article 13 paragraph 1 does however lapse if and insofar as the damage is the result of intent or gross negligence of managerial staff of ProcoliX.
4. The liability of ProcoliX due to an attributable shortcoming in the fulfilment of the Agreement only arises if the Client immediately and properly gives ProcoliX notice of default in writing, thereby setting a reasonable term to remedy the shortcoming, and ProcoliX also after that term continues to fail attributable in the fulfilment of its obligations. The notice of default must contain the most detailed possible description of the shortcoming, so that ProcoliX is able to respond adequately.
5. ProcoliX is never liable for damage caused by force majeure (Article 14).
6. A condition for the arising of any right to compensation is always that the Client reports the damage in writing and by registered mail to ProcoliX within 30 days after its occurrence.
7. The Client indemnifies ProcoliX against all claims of third parties due to liability as a result of a defect in the Service that was delivered by the Client to a third party and that consisted partly of goods, materials or results delivered by ProcoliX.

### **Article 14. Force majeure**

1. In case of force majeure, which in any case includes failures or breakdowns of the internet, the telecommunication infrastructure, synflood, network attack, DoS or DDoS attacks, power failures, domestic disturbances, mobilisation, war, obstruction in transport, strike, lockout, business interruptions, stagnation in supply, fire, flooding, import and export restrictions and in case ProcoliX is not enabled to deliver by its own suppliers, regardless of the reason, whereby fulfilment of the Agreement cannot reasonably be required from ProcoliX, the performance of the Agreement will be suspended, or the Agreement will be terminated when the force majeure situation has lasted longer than ninety days, all without any obligation to pay compensation.

### **Article 15. Duration and termination**

1. If the Service is intended for the periodic performance of services for a certain period, the Agreement shall be deemed to have been entered into for a minimum term of twelve months unless agreed otherwise in writing. In the absence of a written termination, the Agreement shall always be tacitly renewed for the same period of at least twelve months unless agreed otherwise in writing. The written termination shall be deemed timely by Client if it has been sent to ProcoliX three months before the expiry of the term of twelve months.
2. In case of termination, ending or dissolution for whatever reason, ProcoliX is entitled to immediately after the date on which the Agreement ends delete or make inaccessible all stored data and to close all accounts of Client. ProcoliX is not obliged in such case to provide Client with a copy of this data.
3. Delivery periods stated by ProcoliX are, unless explicitly and in writing indicated that it is a strict deadline, always indicative in nature. ProcoliX shall, also in the case of an agreed strict deadline, only be in default after Client has given written notice of default, except in cases where default occurs by operation of law pursuant to mandatory statutory provisions.
4. Exceeding of agreed delivery times, for whatever reason, does not entitle to damages, unless agreed otherwise in writing.

5. If Client fails to comply with any obligation resting on it under the Agreement, ProcoliX has the right to suspend the performance of all agreements concluded with the Client concerned without any notice of default or judicial intervention being required and without prejudice to the right of ProcoliX to compensation for damages, lost profit and interest, unless the non-compliance in question is of minor significance.

#### **Article 16. Confidentiality**

1. Parties shall treat information provided to each other before, during or after execution of the Agreement confidentially when such information is marked as confidential. Parties shall also impose this obligation on their employees as well as on third parties engaged by them for execution of the Agreement.
2. ProcoliX will not take notice of data that Client stores and/or distributes via the systems of ProcoliX, unless this is necessary for proper performance of the Agreement or ProcoliX is obliged to do so pursuant to a statutory provision or court order. In such case, ProcoliX will make efforts to limit the access to the data as much as possible, insofar as this is within its power.
3. This obligation also continues after termination of the Agreement for whatever reason, and as long as the providing party can reasonably claim the confidential nature of the information.

#### **Article 17. Amendments to the General Terms and Conditions**

1. ProcoliX reserves the right to amend or supplement these terms and conditions.
2. Amendments also apply to agreements already concluded with due observance of a period of 30 days after announcement of the amendment on the Website of ProcoliX or by electronic notification. Amendments of subordinate importance may be implemented at any time.
3. If Client does not wish to accept an amendment to these terms and conditions, he may terminate the agreement against the date on which the new terms and conditions come into force. The termination must be received by ProcoliX no later than on the effective date of the amendment.

#### **Article 18. Final provisions**

1. This agreement is governed by Dutch law.
2. As not otherwise prescribed by rules of mandatory law, all disputes that may arise as a result of this agreement shall be submitted to the competent Dutch court for the district in which ProcoliX is established.
3. If any provision of this agreement proves to be null and void, this shall not affect the validity of the entire agreement. In that case, Parties shall establish (a) new provision(s) to replace it, whereby as much as legally possible the intention of the original Agreement and General Terms and Conditions shall be taken into account.
4. Information and notices on the Website of ProcoliX are subject to obvious programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement shall prevail.
5. In these terms and conditions, "in writing" also includes e-mail, and communication via the administrative account provided the identity and integrity of the sender is sufficiently established.
6. The version of any communication received or stored by ProcoliX shall be considered authentic, unless proof to the contrary is provided by Client.
7. Parties shall always promptly inform each other in writing of any changes in name, postal address, e-mail address, telephone number and bank account number if requested.
8. Each Party is only entitled to transfer its rights and obligations under the Agreement to a third party with the prior written consent of the other Party.