

TERMS AND CONDITIONS

Date: 2023-10-20

Definitions

Pronovix: PRONOVIX GROUP BV, a limited liability company established in 9971 Lembeke, Gravin Madeleine d'Alcantaralaan 57., Belgium; registered under the VAT number BE0798966630.

Background IP: intellectual property (IP) already in existence owned by Pronovix.

Client: Any person ordering or receiving Services and/or Deliverables from Pronovix.

Deliverables: intellectual property delivered to Client as part of the Service as well as all the Developed Materials developed by Pronovix, including applications, diagrams, concepts, documentation, guidelines, charts that fulfill the performance of the Service as well as such Background IP that is expressly indicated by Pronovix as Deliverable.

Developed Code: Developed Material in the form of software code.

Developed Material: material newly developed by Pronovix for the Client under these Terms and Conditions. Explicitly excluded are Background IP and Third Party Material.

Service or Services: all of the services to be supplied by Pronovix also including services with provision of Deliverables and services including the provision of a license of use for the solution without the provision of Deliverables (QuickStart customers).

Article 1. Applicability

1. These general conditions (the "General Terms and Conditions") apply to all proposals, offers and quotations of Pronovix to its Clients and to all agreements between Pronovix and its Clients, unless specific contractual terms were agreed in writing. These General Terms and Conditions take precedence over the terms and conditions from the Client or any involved third party, even if such terms and conditions have not been expressly protested by Pronovix.
2. All other conditions than these General Terms and Conditions, and any deviations herefrom, even if such changes originate from a representative of Pronovix, must in order to be binding to Pronovix, be confirmed in writing by Pronovix's authorized representative.
3. Pronovix reserves the right to modify these General Terms and Conditions. Changes to the General Terms and Conditions will be made available to the Client in a form chosen by Pronovix at least 1 month before they come into effect. The Client has 14 days after publication of the amendment to notify Pronovix in writing that the Client cannot subscribe to these changes, in which case the old Terms and Conditions will remain in force. If the Client fails to respond or does not respond in time, the new General Terms and Conditions will come into force.
4. Technical information, charts, illustrations and the like in the format of paper and online brochures are designed to generate a general impression about Pronovix and are not binding.

Article 2. Quotation and order

1. Unless otherwise stated in a proposal, a proposal shall be valid for 30 (thirty) days.
2. Any order that has not been subject to a written estimate is binding only if accepted in writing by Pronovix.
3. No agents and representatives have power of legal representation. Orders taken by the aforementioned will only become binding by a written confirmation of Pronovix's authorized representative.

Article 3. Prices and Payment

1. Unless otherwise stated the prices of Pronovix are always quoted in Euro and are exclusive of VAT. Any increase in the VAT rate or other tax of any kind between the acceptance of the proposal and its implementation will be borne by the Client.
2. Invoices are payable by wire transfer no later than 15 (fifteen) days after the invoice date, except as otherwise agreed in a fully executed agreement between the parties.
3. Any late payment or non-payment is considered a contractual breach under Art. BW 1147. In this case, the amount of the invoice will be increased without warning or notice with a fixed penalty of 12% of the amount of the invoice, with a minimum of 150 EUR. Moreover, arrears of 1% per month will be charged. In the calculation parts of months will be counted as full months. Compensation and interest are payable regardless of any legal interest and costs.
4. Any non-payment of a bill before its due date will render claimable any other open bills that had been prepared for the same Client.
5. Dispute of invoices is to be communicated to Pronovix in registered mail, with clear mention of the reason for the dispute, within 8 (eight) days from the invoice date. Such dispute will not relieve the Client from its payment obligation.

Article 4. Delivery and Acceptance rules for Services that involve provision of Deliverables

1. Unless specifically otherwise agreed delivery times are indicative and not binding.
2. The delivery takes place through the performance of the Service and/or the provision of the Deliverables and the notification by Pronovix that the Service has been performed and/or the product is ready for use. After delivery the Client has the duty to verify and carefully test the Service and/or the Product and to report any shortcomings.
3. Unless otherwise agreed, the Client has a period of 7 (seven) calendar days, commencing from the date of delivery to notify Pronovix of the total or partial acceptance or refusal of the Service/Deliverables. Any full or partial refusal by the Client shall be done in registered mail. The absence of any response from the Client within the time limit predetermined in this article, shall imply the approval of the Service/Deliverables and the successful execution of the tests.
4. Hidden defects shall be reported within 5 (five) days after their discovery. The Client shall bear the risk if the Client has failed to perform the necessary tests after delivery.

Article 5. Services that involve a 'license of use' without provision of Deliverables (QuickStart)

1. For Clients purchasing 'QuickStart' services, Pronovix shall provide a license of use to the solution described in the relevant proposal/offer and provide hosting and support services in relation to the solution
2. The proposal/offer shall indicate the day by which the services provided with the QuickStart solution shall be ready to be made available for the Client. If the proposal/offer does not indicate such date, it is 7 work days after the proposal/offer is fully executed or otherwise accepted in writing.
3. In lack of a written notice by the Client the provided services and the compliance thereof with relevant regulations are agreed to be approved by the Client.
4. The service start date is the day following the elapse of a period of 7 work days.

Article 6. Warranty and Liability

1. ALTHOUGH PRONOVIX WILL PERFORM AND/OR DELIVER THE SERVICE AND/OR DELIVERABLES TO THE BEST OF ITS KNOWLEDGE AND ABILITY, PRONOVIX OFFERS NO WARRANTY FOR THE PROVIDED SERVICES OR DELIVERABLES, EXPLICITLY EXCLUDED

IS THE WARRANTY THAT THE SERVICE OR DELIVERABLES WILL BE SUITABLE FOR A PARTICULAR PURPOSE.

2. PRONOVIX IS NOT LIABLE FOR ANY DAMAGE THAT IS NOT DIRECTLY AND IMMEDIATELY CAUSED BY A PROVEN INTENT OR GROSS NEGLIGENCE.
3. PRONOVIX WILL NEVER BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES SUCH AS LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF INCOME, THIRD PARTY CLAIMS, LOSS OF DATA, ETC. EVEN IF PRONOVIX WAS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGE REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCTS LIABILITY, OR OTHERWISE.
4. THE LIABILITY OF PRONOVIX RELATED TO DIRECT DAMAGE WILL BE LIMITED TO COMPENSATION IN KIND BY RE-PERFORMANCE OF THE SUPPLIED SERVICES AND/OR DELIVERY OF THE DELIVERABLES.
5. CLIENT WARRANTS THAT THE CONTENT ON ITS WEBSITE(S) PROVIDED, HOSTED OR SUPPORTED BY PRONOVIX WILL COMPLY WITH ALL APPLICABLE STATUTORY PROVISIONS, PUBLIC MORALS AND THIRD PARTY RIGHTS AND ALSO THAT THE CONTENT ON THE WEBSITE(S) IS NOT ILLEGAL, INFRINGING AND/OR SUBJECT TO CRIMINAL SANCTIONS. IN THE EVENT THAT THE CLIENT INFRINGES THIS PROVISION, PRONOVIX SHALL BE ENTITLED TO DISCONTINUE THE SERVICES WITH IMMEDIATE EFFECT AND BLOCK ACCESS TO CLIENT'S WEBSITE(S).
6. PRONOVIX'S CLIENT WILL INDEMNIFY PRONOVIX AGAINST ALL COSTS, INCLUDING ATTORNEY FEES, EXPENSES, DAMAGES, CLAIMS AND ACTIONS RESULTING FROM THIRD PARTIES RELATED TO ACTS OF THE CLIENT. THIS ALSO INCLUDES (WITHOUT LIMITATION) CLAIMS FOR INFRINGEMENT OF INTELLECTUAL PROPERTY AND DATA PROTECTION RIGHTS.
7. BOTH PRONOVIX'S CONTRACTUAL AND EXTRA-CONTRACTUAL LIABILITIES WILL IN ALL CASES BE LIMITED TO FIFTY PERCENT (50%) OF THE AMOUNTS PAID BY THE CLIENT THAT WERE INVOICED IN THE FRAMEWORK OF THE DAMAGING SERVICE AND/OR DELIVERABLES.

Article 7. Intellectual Property Rights

1. Where the Services include provision of Deliverables:
 - 1.1. Pronovix retains the intellectual property rights of the Background IP and the Developed Code, and of the configuration and documentation made by Pronovix.
 - 1.2. If not otherwise specified, Developed Code is provided to the Client, once the related services have been fully paid, under the GNU General Public License version 2. In case of Deliverable that is not software code, the Client receives a worldwide, royalty-free, non-exclusive and perpetual rights to use, copy and modify, for its own purposes, the delivered material, including configuration and documentation.
2. Where the Services a 'license of use' without provision of Deliverables (QuickStart):
 - 2.1. Pronovix provides Client a worldwide, non-exclusive, non-sublicensable, non-transferable, revocable limited license of use for the duration of the term indicated in the proposal/offer for the solution described in the relevant proposal/offer.
 - 2.2. Client provides a limited license of use for its required branding elements to Pronovix for the sole purpose of customizing the service in accordance with the needs of the Client.
 - 2.3. All intellectual property rights in relation with the service shall remain the property of their respective owners.

Article 8. Confidentiality

1. Pronovix and Client undertake to maintain the confidentiality of all information and data received during execution of the work. Pronovix and Client take all possible precautions to protect the interests of each other. The Client will not give information to third parties about the approach, methods or proposal of Pronovix or make available its reports, without prior consent from Pronovix.
2. Notwithstanding the foregoing, Pronovix retains the right to mention the Client's name and use their logo as a reference.

Article 9. Suspension, cancellation, termination, severance, survival

1. In case and as long as the Client fails to fulfill any contractual obligation, Pronovix has the right to suspend the fulfillment of its obligations, without diminishing its other rights against the Client.
2. Pronovix is entitled to terminate agreements with or without cause at its sole discretion through simple notification by registered mail, in such circumstances the obligation of the Client to pay any outstanding amounts due and its right to compensation will remain undiminished where one of the following conditions occur: (a) if Client, after written notice within 30 (thirty) days for its contractual obligations (e.g. paying bills) fails to meet these obligations, (b) if Client is in bankruptcy, insolvency or cessation of payments, if its credit has been damaged or in case of liquidation or dissolution of the Client;
3. In case of services that involve the provision of Deliverables and in the event of dissolution or termination of a contract or order by the Client or by Pronovix after breach of the Client, Pronovix will be automatically entitled to a fixed payable compensation for 20% of the value of the contract, Pronovix retains the right for a higher compensation when Pronovix proves that the actual damages incurred exceed this amount.
4. In case of services that involve a 'license of use' without the provision of Deliverables, Pronovix is entitled to the complete fees for the period chosen in the proposal/offer upon the acceptance of Pronovix's proposal/offer by Client even if Client terminates or cancels the service before the elapse of the period indicated in the proposal/offer. No fees shall be refundable either in whole or proportionally in case of dissolution or termination of contract by any of the Parties or in any way for any reason. Any agreed but yet unpaid fees shall become immediately payable in whole upon termination.
5. If any part of these Terms and Conditions is declared unenforceable or invalid, the remainder shall continue to be valid and enforceable.
6. Following the termination of the present Terms and Conditions for any reason, the provisions of Article 8. (Confidentiality) shall survive termination and remain in full force for indefinite time.

Article 10. Transfer - Subcontracting

1. The Client may not transfer its rights and obligations under these terms and conditions in whole or in part to third parties, without the prior express written permission of Pronovix.
2. Pronovix reserves the right to hire third parties as subcontractors and service providers for the full or partial execution of the assignment. Upon request Pronovix provides Client a list of subcontractors and service providers involved in Client's project.

Article 11. Data Protection

1. Parties will enter into a Data Protection Agreement (DPA) that regulates their relevant rights and obligations. In lack of a DPA Parties shall comply with all data protection laws applicable based on the location of the servers used for service provision or the location where provision of the Deliverables take place.

2. Client is responsible for (i) any communication and consent collection for the purpose of compliance with applicable data protection laws in connection with the developer portal, (ii) the relevant notifications and verification of the suitability of relevant features.
3. In case of all services (both in case of provision of Deliverables or license of use without Deliverables), privacy notices, disclaimers, legal notices and statements are considered 'content' therefore Client remains completely liable for providing these as well as for their suitability for the intended legal purpose and their compliance with the applicable legal provisions. The Client is also exclusively liable for compliance features of the solution, e.g. cookie compliance.

Article 12. Language

1. By accepting the present Terms and Conditions, the Client agrees the choice of language and confirms the full comprehension of its content.
2. Door aanvaarding van onderhavige Algemene Voorwaarden, gaat de Klant akkoord met de taalkeuze en bevestigt hij dat hij de inhoud volledig begrijpt.
3. En acceptant les présentes Conditions Générales de Vente, le Client accepte le choix de la langue et confirme en avoir parfaitement compris le contenu.
4. Mit der Annahme der vorliegenden Allgemeinen Geschäftsbedingungen stimmt der Kunde der Sprachwahl zu und bestätigt dass er deren Inhalt vollständig versteht.

Article 13. Inadmissibility - Applicable law - Jurisdiction

1. Any dispute regarding the interpretation or execution of an agreement by the Client must, by burden of inadmissibility, be brought within two (2) years after the onset of the underlying cause of action.
2. These General Terms and Conditions and all agreements between Pronovix and the Client are subject to Belgian law and under the jurisdiction of the Business Court Ghent, division Ghent, the Court of First Instance East-Flanders, division Ghent or the District Court of Zelzate.
3. Client acknowledges that the e-mail communications between the Client and Pronovix will legally be equivalent with written evidence.