

TERMS AND CONDITIONS

Procerus OnPoint™ Targeting

Please be advised. OnPoint Targeting, once installed on your computer, is node-locked to that computer and cannot be moved.

1. GENERAL. The terms and conditions of sale contained herein apply to all quotations made and all purchase orders received by Licensor, and acceptance by Licensor of any order by confirmation shall be on the basis of these Terms and Conditions. Any changes in the Terms and Conditions of Sale contained herein must specifically be agreed to in writing by an officer of Licensor before becoming binding on Licensor. These Terms and Conditions may include additional terms, if any, contained in Appendix B, which is attached hereto and incorporated herein by this reference.

2. END USER LICENSE. Subject to all the terms of this Agreement and compliance therewith, Licensor grants Company a non-sub-licensable (except as may be expressly provided), non-transferable, non-exclusive, license to end users for use only on specified end user machines in accordance with the applicable documentation (each an "End User License").

3. TEMPORARY LICENSE. A Temporary License is granted upon installation of the software and will automatically expire at the end of thirty (30) days and is non-renewable, and Company will ensure cessation of the Software at the end of such period unless and until a valid Licensor license key is issued for a commercial End User License. All End User Licenses and Temporary Licenses may only be implemented and exercised using valid Licensor license keys obtained from Licensor and are subject to Licensor's policies, practices, and this agreement.

4. THIRD PARTY SOFTWARE. The third party software referenced on the Third Party Software Attachment to this Agreement ("Third Party Software") is subject to the applicable licenses referenced in Appendix A (each an "Third Party License"). Company agrees to use the Third Party Software solely in accordance with the applicable Third Party License.

5. LICENSE RESTRICTIONS. Company will not (and will not allow any third party to): (i) reverse engineer or otherwise attempt to discover any source code or underlying ideas or algorithms of the Software (collectively "Licensed Software") (i) modify, translate, or otherwise create derivative works of Licensed Software; (ii) distribute the Licensed Software (iii) allow the removal, alteration, covering or obscuring or of any notice or mark that appears on the Licensed Software, on any copies or media; or (iv) tamper with or otherwise attempt to bypass or circumvent any Licensor license keys or other mechanisms that limit, restrict or govern access to or use of the Licensed Software.

Nothing contained in this Agreement shall, by express grant, implication, estoppel or otherwise, create any right, title, interest, ownership or license in or to the inventions, derivative works, patents, technical data, computer software, or software documentation of Licensor or its suppliers. Any rights not expressly granted in this license are reserved by Licensor.

Nothing contained in this Agreement shall grant to Buyer the right to make commitments of any kind for or on behalf of Seller without the prior written consent of the Seller.

6. SUPPORT SERVICES. This Agreement does not obligate Licensor to provide Company any support, upgrades, patches, enhancements, or fixes for the Licensed Software (collectively, "Support"); however, any such Support for the Software that Licensor may make available in its sole discretion shall become part of the Software and subject to this Agreement.

7. FEES AND PAYMENT TERMS. For each End User License, Company must pay the End User License Fees as set forth in the Pricing Attachment ("License Fees"). Company will pay all applicable shipping charges, duties, assessments, taxes and the like. All invoices on credit terms are due and payable 30 days from the date of invoice unless otherwise specified. No discounts are allowed unless agreed to in writing by Licensor. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month (or the maximum rate allowed in Company's State, if lower) from their due date until paid. Company will pay all costs and expenses of collection of overdue accounts, including reasonable attorney's fees.

8. CONFIDENTIAL INFORMATION. Company agrees that all code, inventions, algorithms, know-how, ideas, and all business, technical and financial information it obtains from Licensor are the confidential property of Licensor and its suppliers ("Confidential Information"). Except as expressly and unambiguously allowed herein, Company will hold in confidence and not use or disclose any Confidential Information. Company's nondisclosure obligation will not apply to information it can document is generally available to the public (other than through breach of this Agreement). Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that Licensor's remedies at law for a breach by Company of its obligations under this Section 7 will be inadequate and that Licensor will be entitled to equitable relief (including without limitation provisional and permanent injunctive relief and specific performance) in addition to any other remedies.

9. WARRANTY AND DISCLAIMERS. LICENSOR MAKES NO WARRANTIES OR REPRESENTATIONS AS TO LICENSED SOFTWARE AND LICENSOR DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED), INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM ERRORS OR BUGS. Company acknowledges that it bears the sole risk and responsibility for determining if the Licensed Software is suitable for its intended purposes. No warranty is offered, expressed or implied, on any 3rd party products sold by Seller to Buyer.

10. UNAUTHORIZED USE; INDEMNITY. THE LICENSED SOFTWARE IS NOT DESIGNED, INTENDED, OR AUTHORIZED FOR USE IN ANY MEDICAL, LIFE SAVING OR LIFE SUSTAINING SYSTEMS OR OTHER HIGH RISK OR STRICT LIABILITY ACTIVITIES, OR FOR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD TO PERSONAL INJURY OR DEATH. Company is solely responsible for all of

its activities in connection with this Agreement and for the satisfaction of its customers, and Company will indemnify Licensor from any and all claims, liabilities, damages, debts, settlements, costs, attorneys' fees, expenses, and liabilities of any type whatsoever that may arise on account of (i) Company's activities, or those of its employees, agents or end users, including without limitation, providing unauthorized representations or warranties (or failing to disclose all limitations on warranties and liabilities set forth herein on behalf of Licensor) to its customers or breaching any term, representation or warranty of this Agreement, or (ii) any claim of product liability, personal injury or death associated with any use of the Licensed Software (including any unintended or unauthorized uses described above).

11. **LIMITATIONS OF LIABILITY.** Notwithstanding anything else in this agreement or otherwise, Licensor will not be liable or obligated with respect to any subject matter of this agreement or under any contract, negligence, strict liability or other legal or equitable theory (a) for any amounts in excess of the licensee fee paid to Licensor during the Twelve (12) month period preceding the cause which gave rise to such damages; (b) for any cost of procurement of substitute goods, technology, services, or rights; (c) for any special, indirect, incidental or consequential damages; (d) for interruption of use or loss or corruption of data; or (e) for any matter beyond its reasonable control. The foregoing limitation is a fundamental part of the basis of licensor's bargain hereunder. Licensor would not enter into this agreement absent such limitation.

12. **EXPORT CONTROL.** Company shall not transfer Licensed Software, Technical Data or Confidential Information or any direct product thereof these product(s) received under this Agreement to any foreign person, country, foreign subsidiary or parent corporation, without specific written authorization from the Licensor or in violation of any laws or regulations. Further, the receiving party does assure the disclosing party it will not disclose technical data received hereunder to any employee, consultant or subcontractor employee not holding United States citizenship or granted admission or permanent residence in the United States under the Immigration and Nationality Act, as amended (8 USC 1101 et seq.).

LICENSOR:

Procerus Technologies
500 South Geneva Road
Vineyard, UT 84058
801-224-5713 (main)
801-437-0182 (fax)

13. **MISCELLANEOUS.**

(a) This Agreement is not assignable or transferable by Company without the prior written consent of Licensor; any attempt to do so will be null and void. This Agreement is assignable by Licensor to any successor to all or substantially all of its assets or business. Parties agree that they are each independent entities and nothing in this Agreement will be deemed to establish a joint venture, partnership, agency or employment relationship between the parties. Neither party has the right or authority to assume or create any obligation or responsibility on behalf of the other.

(b) If any provision of this Agreement is unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement will be construed under the laws of the State of Utah, without regard to conflicts of laws provisions thereof. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. In any action relating to the subject matter of this Agreement, the prevailing party will be entitled to recover reasonable legal fees and related costs.

(c) As defined in FAR section 2.101, the software and accompanying documentation licensed in this agreement are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) these items are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the US. Government will be governed solely by the terms of Licensor's end user license and will be prohibited except to the extent expressly permitted by the terms of that license.

By receipt of and/or by executing these Terms and Conditions of Sale in the space provided below, LICENSOR ACKNOWLEDGES AND AGREES THAT IT HAS READ AND UNDERSTANDS THESE TERMS AND CONDITIONS AND THAT IT WILL BE BOUND BY AND SUBJECT TO THESE TERMS AND CONDITIONS OF SALE.

BUYER:

Company: _____

Address:

City: _____

State: _____

Zip: _____

By: _____

Title: _____

Date: _____

Appendix A

THIRD PARTY SOFTWARE ATTACHMENT

THIRD PARTY SOFTWARE LICENSES

PNG (Portable Network Graphics format)

<http://www.libpng.org/pub/png/src/libpng-LICENSE.txt>

ZLIB (compression library used for PNG)

http://www.zlib.net/zlib_license.html

libTiff

http://www.gnu.org/licenses/info/BSD_2Clause.html

JPEG

<http://dev.w3.org/cvsweb/Amaya/libjpeg/README?rev=1.2>

Intel IPP (Integrated Performance Primitives, low level accelerator routines)

http://www.intel.com/software/products/ipp/eula_ipp.htm