

## **PRO-ED, Inc. Website Terms of Use**

Effective Date: 8-19-22

Welcome, and thank you for your interest in PRO-ED, Inc (“PRO-ED,” “we,” “us,” or “our”). Access and use of our website [www.proedinc.com](http://www.proedinc.com) and any other websites, desktop apps, and any mobile applications (the “Site”) that are owned and operated by PRO-ED are subject to this Terms of Use Agreement. The following Terms of Use are a legal contract between you (“you” and “your”) and PRO-ED regarding your use of the Site.

PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY. BY ACCESSING, BROWSING, OR USING THE SITE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS IN THIS AGREEMENT, INCLUDING THE PRO-ED [WEBSITE PRIVACY POLICY](#) (COLLECTIVELY, THE “TERMS” OR “AGREEMENT”). If you do not agree with these Terms, you may not access or use the Site.

Your use of certain products and services on the Site may be subject to additional terms, which may be presented to you for acceptance when you sign up for those products or services or may otherwise be binding on you through your use of any products or services, such as an end user license agreement (“Supplemental Terms”). These Terms are incorporated by reference into any Supplemental Terms. In the event of any conflict between these Terms and any Supplemental Terms, the Supplemental Terms will control with respect to your use or access of the product or service associated with such Supplemental Terms.

If you are accepting these Terms on behalf of an organization, school or entity, you represent that you are duly authorized to bind that organization, school or entity to these Terms.

PLEASE NOTE THAT THESE TERMS INCLUDE A BINDING ARBITRATION PROVISION, INCLUDING A CLASS ACTION WAIVER. BY AGREEING TO BINDING ARBITRATION, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, YOU WAIVE YOUR RIGHT TO LITIGATE DISPUTES THROUGH A COURT AND TO HAVE A JUDGE OR JURY DECIDE YOUR CASE.

**1. Description of the Site.** PRO-ED operates the Site to enable you to obtain information or price quotes about our various products and services, to create an account, to order products, to contact us, and in some instances access certain online products and services offered by PRO-ED. To access and use certain features of the Site, such as placing orders, you will be required to create a personal account or an organization account for your company, organization or educational institution.

### 1.1 Account registration:

To register for an account, you must be at least 18 years of age or older. In consideration of use of your registration, you will: (a) provide true, accurate, current and complete information about yourself as prompted by the applicable registration form (such information being the “Registration Data”) and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. Your registration is a legally binding agreement, as evidenced by your acceptance of these Terms of Use. If you provide any information that is untrue, inaccurate, not current or incomplete, or PRO-ED has grounds to suspect that such information is untrue, inaccurate, not current or incomplete, PRO-ED has the right to suspend or terminate your account and refuse any and all current or future use of the Site

(or any portion thereof). You are responsible for the security and confidentiality of your password and account. Furthermore, you are responsible for any and all activities that occur under your account, including the purchasing of products. You agree to immediately notify us of any unauthorized use of your account or any other breach of security of which you become aware. You are responsible for taking precautions and providing security measures best suited for your situation and intended use of the registration and Site. We have the right to provide user billing, account, content or user records, and related information under certain circumstances (such as in response to legal requirements, lawful process, orders, subpoenas, or warrants, or to protect our rights, customers or business) to third parties.

**2. Privacy Policy.** Please carefully read the PRO-ED [WEBSITE PRIVACY POLICY](#), which is hereby incorporated into these Terms (and which are part of our contract with you), for information relating to PRO-ED's collection, use, and disclosure of your personal information. Among other things, our Privacy Policy explains how we process your personal information when you use our Site.

**3. Modification of Terms.** PRO-ED reserves the right, in its sole discretion, to change, modify, add, remove, or otherwise alter the Terms at any time. We will make reasonable effort to provide notice to you of such modifications, such as by posting a notice on the Site, and such amended terms will be effective against you when we have posted such notice. However, changes addressing new functions for a service or changes made for legal reasons will be effective immediately. Accordingly, you should review the Site and these Terms regularly to keep yourself apprised of any future changes. Your use of the Site following any modifications will be deemed to establish your agreement with such new terms and conditions.

**4. Site Access License.** PRO-ED grants you a limited, revocable, non-exclusive, non-transferable license to access and make personal, noncommercial use of the Site and not to download (other than page caching or unless otherwise allowed by PRO-ED or permitted by law) or modify all or any portion of the Site. This license does not include any re-sale or commercial use of the Site; any collection and use of any product listings, descriptions, or prices; any derivative use of the Site; any downloading or copying of account information for the benefit of another merchant; or any use of data mining, robots, or similar data gathering and extraction tools. The Site and/or any portion of the Site may not be reproduced, duplicated, copied, sold, resold, visited or otherwise exploited for any commercial purpose without PRO-ED's express prior written consent. You shall not frame or utilize framing techniques to enclose any trademark, logo or other proprietary information (including images, text, page layout or form) of PRO-ED, its content providers or its affiliates without express prior written consent. You shall not use any meta tags or any other "hidden text" utilizing our name or trademarks without our express prior written consent. Any unauthorized use automatically terminates the permissions and/or licenses granted by us to you.

**5. Prohibited Conduct.** You are expressly prohibited from any conduct that: (1) threatens the security, integrity, or availability of the Site; (2) provides or facilitates access to the Site by unauthorized users or services; and/or (3) results in prohibited duplication, transmission, or exposure of the Site (as defined below). You shall not use the Site in violation of these Terms, or any applicable local, state, national, or international law or regulation. Nor shall you use the Site in a manner which threatens the security, stability, or integrity of the Site or networks connected to the Site ("Service Network"). Without limiting the foregoing, you acknowledge and agree that you will not take any action to:

- impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity; including using another person's account credentials (including passwords) or making your account credentials available to others;
- use or attempt to use any "deep-link," "scraper," "robot," "bot," "spider," "data mining," "computer code," or any other automated device, program, tool, algorithm, process or methodology or manual process having similar processes or functionality, to access, acquire, copy, or monitor any portion of the Site, any data or content found on or accessed through the Site;
- introduce viruses, trojans, worms, logic bombs, or other material that is malicious or technologically harmful;
- attack our Site via a denial-of-service attack or a distributed denial-of service attack (a breach of this provision would commit a criminal offense and we will report any such breach to the relevant law enforcement authorities and we will cooperate with those authorities by disclosing your identity to them, and in the event of such a breach, your right to use the Site will cease immediately);
- violate any measure employed to limit or prevent access to the Site or otherwise obtain or attempt to obtain through any means any content, functionality, or other information which has not been intentionally made available to you either by visible display on the Site or access through a visible link on the Site;
- decompile, reverse engineer, or otherwise attempt to obtain the source code of the Site;
- attempt, in any manner to gain unauthorized access to the Service Network, attempt to gain unauthorized access to our Site, the server on which our websites are stored or any server, computer or database connected to our Service Network, obtain the password, Account Credentials, or other security information from or of any other Authorized User, or otherwise violate the security of the Service Network or access encrypted codes;
- interfere with or disrupt (or attempt to interfere with or disrupt) the proper working of the Site or Service Network, or violate any requirements, procedures, policies or regulations of the Service Network;
- take or attempt any action that, in the sole and absolute discretion of PRO-ED, imposes or may impose an unreasonable or disproportionately large load or burden on the Service Network, disrupts the normal flow of data, or threatens the stability of the Site or Service Network; or
- engage in any conduct which, in PRO-ED's sole and absolute discretion, diminishes the pedagogical or commercial value of the Site, infringes any proprietary rights in the Site, or otherwise violates these Terms.

**6. Consent to Communications.** PRO-ED may contact you via the contact information you provide to register an account or through information provided through your initiation of contact (e.g., through the "Contact Us" feature of the Site). By providing such contact information, you consent to receive communications from PRO-ED via that contact information. We may use your email address to send you information about the PRO-ED Site, our products and services, events, research surveys and special offers. You may opt-out of such email by changing your account settings, using the "unsubscribe" link in the message, or by sending an email to [privacy@proedinc.com](mailto:privacy@proedinc.com) You will continue to receive communications related to your account and transactions.

## **7. Intellectual Property.**

7.1 Intellectual Property Rights. Intellectual Property Rights mean all intellectual property rights worldwide arising under statutory or common law, and whether or not perfected, including, without

limitation, all (i) patents, patent applications, and patent rights; (ii) rights associated with works of authorship including copyrights, copyright applications, and copyright registrations; (iii) rights relating to the protection of trade secrets and Confidential Information; (iv) any other proprietary rights relating to intangible property; (v) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired; and (vi) all goodwill associated with any of the foregoing.

All right, title, and interest in and to the Site and intellectual property, generally, are and will remain exclusively with PRO-ED. You acknowledge and agree that the Site contains proprietary and Confidential Information, including but not limited to text, graphics, logos, icons, images, and the arrangement and compilation of such content, computer programs, documentation, and information of or containing proprietary information relating to the computing programs, is protected by applicable U.S. and/or international copyright, patent, and/or trade secret laws and other laws. Regarding computer programs such as those that are part of the Site, you expressly agree that you will not decompile, disassemble, or otherwise reverse engineer such computer programs or cause or enable others to do so. Except as expressly permitted by PRO-ED, you agree not to copy, modify, rent, lease, loan, sell, distribute, repost, publicly display, use for any commercial purposes, or create derivative works based on the Site, in whole or in part, without the prior express written permission of PRO-ED.

7.2 Trademarks. Nothing in these Terms establishes a license for you to use PRO-ED's source identifiers, including its brands, marks, or logos, without the prior written consent of PRO-ED.

**8. Third Party Sites, Products and Services; Links.** The Site may contain links to the websites of third parties, including social media sites. PRO-ED is not responsible for and has no liability for the functionality, actions, inactions, privacy settings, privacy policies, terms, or content of any such website. Before accessing any third-party website or sharing content via a social site, PRO-ED strongly recommends that you review and understand the terms and conditions and privacy policies of such third-party website. Any links to third-party websites do not constitute an endorsement by PRO-ED of the third-party website, products, or services. Your use of third-party websites and resources is at your own risk.

**9. Payment Processors.** All financial transactions made in connection with the Site will be processed by a third-party, who is our service provider and is processing your payment card data in compliance with this Privacy Policy. PRO-ED does not collect or store any payment card information.

## **10. Termination.**

10.1 Term. These Terms shall remain in full force and effect while you use the Site unless your access to the Site or your account is terminated as provided in these Term, in which case you no longer have the right to use the Site.

10.2 Termination. PRO-ED, in its sole discretion, may terminate your access and use of the Site or your account immediately at any time, for any reason, with no penalty, and at such time you will have no further right to use the Site. You may terminate your PRO-ED account at any time by following the instructions available through the Site.

**11. Indemnity.** You agree to the extent permissible by applicable law to indemnify and hold PRO-ED and its subsidiaries, affiliates, officers, directors, agents, employees, as well as their successors and assigns,

harmless from all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interests, awards, penalties, fines, costs, or expenses of any kind, including reasonable attorneys' fees, made by any third party due to or arising from or in connection with your use of the Site, or your breach of these Terms, including the foregoing representations, warranties, and covenants, or any term of any document it incorporates by reference, or your violation of any law, any contract or the rights of a third party, including without limitation, attorneys fees, and costs.

**12. DISCLAIMERS; NO WARRANTIES.** THE PRO-ED SITE AND ANY SOFTWARE OR ANY OTHER PRODUCTS OR SERVICES MADE AVAILABLE TO YOU THROUGH THE SITE ARE PROVIDED ON AN "AS IS", "AS AVAILABLE," AND WITH ALL FAULTS BASIS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, PRO-ED EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SITE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AVAILABILITY, QUIET ENJOYMENT, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE, NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, PRO-ED PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SITE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATION, SYSTEM, OR SERVICES, OR COMPUTING DEVICE, OR OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM PRO-ED OR THROUGH THE SITE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN.

YOU UNDERSTAND AND AGREE THAT YOUR USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAINING OF CONTENT, WEBSITE MATERIALS, SOFTWARE, OR DATA THROUGH THE SITE IS AT YOUR OWN DISCRETION AND RISK, AND THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM) OR LOSS OF DATA THAT RESULTS THEREFROM.

SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

**13. LIMITATION OF LIABILITY AND DAMAGES.** EXCEPT AS SET FORTH HEREIN, PRO-ED AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AS WELL AS THEIR SUCCESSORS AND ASSIGN, SHALL NOT BE LIABLE FOR ANY DAMAGES OR OTHER LIABILITY ARISING FROM NEGLIGENT ACTIONS OR INACTIONS ARISING FROM OR RELATED TO ANY LOSS DUE TO PERSONAL INJURY, PROPERTY DAMAGE, ANY LOSS OF PROFITS, SAVINGS, OR GOODWILL, LOSS OR INACCURACY OF DATA, OR ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOSS, COST, EXPENSE (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE) THAT RESULT FROM YOUR USE OF THE SITE, INCLUDING BUT NOT LIMITED TO YOUR INABILITY TO USE THE SITE FOR ANY REASON (E.G., UNAUTHORIZED USE OR ACCESS OF YOUR ACCOUNT, ANY INTERRUPTION OF SERVICE, COMPUTER VIRUS) FOR USE OF THE SITE, EVEN IF PRO-ED OR AN AUTHORIZED REPRESENTATIVE OF PRO-ED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY.

**14. Operation and Record Retention.** PRO-ED reserves the sole and total discretion with respect to decisions about the operation of the Site. PRO-ED may, among other things withdraw, suspend, or discontinue any functionality or feature of the Site. PRO-ED is not responsible for transmission errors, or any corruption or compromise of data carried over local or interchange telecommunication carriers. Except as specified above, PRO-ED is not responsible for maintaining data arising from or associated with the use of the Site. PRO-ED reserves the right to maintain, delete or destroy all communications.

We will use, disclose or retain your personal information only for as long as necessary to fulfill the purposes for which that personal information was collected and as permitted or required by law. See our [Privacy Policy](#) for more details.

**15. Class Action Waiver.** YOU AND PRO-ED AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

**16. Governing Law and Venue.** These Terms shall be governed by and construed in accordance with laws of the State of Texas, without regard to the choice of law provisions thereof. Any legal suit, action, or proceeding arising out of or related to these Terms shall be instituted exclusively in Travis County, Texas (federal or state courts). You waive any and all objections to the exercise of jurisdiction over you by such courts and venue in such courts. Any cause of action or claim you may have with respect to the use of the Site must be commenced within one (1) year after it arises, except to the extent such limitation is not enforceable. To the fullest extent permitted by law, each party to these Terms waives its or his or her right to a jury trial with respect to any dispute or other controversy arising from hereunder or your use of or access to the Site.

**17. Dispute Resolution.** In the case of any dispute, you agree to make a good faith effort to resolve via informal resolution, which if unsuccessful, will be followed by binding arbitration in the state of Texas. The arbitration shall be conducted on a confidential basis pursuant to the Commercial Arbitration Rules of the American Arbitration Association.

Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The parties agree that any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award, punitive or exemplary damages against any party.

## **18. Miscellaneous**

**18.1 Changes to these Terms.** PRO-ED may change these Terms from time to time. When these changes are made, PRO-ED will make a new version of these Terms available through the Site. You understand and agree that your use of the Site after the date on which these Terms have changed constitutes acceptance of the updated Terms.

**18.2 Waiver.** The failure of PRO-ED to exercise or enforce any right or provision of the Terms will not constitute a waiver of such right or provision. Any waiver of any provision of the Terms will be effective only if in writing and signed by PRO-ED.

**18.3 Severability.** If any provision of the Terms is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from the Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

**18.4 Assignment.** The Terms and any rights and licenses granted hereunder, may not be transferred or assigned by you without PRO-ED's prior written consent, but may be assigned by PRO-ED without consent or any restriction. Any assignment attempted to be made in violation of the Terms shall be null and void.

**18.5 Survival.** Upon termination of the Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration, including, but not limited to, Sections 2, 3, 5, 7, 10, 11-13, and 15-18.

**18.6 Headings.** The heading references herein are for convenience purposes only, do not constitute a part of the Terms, and will not be deemed to limit or affect any of the provisions hereof.

**18.7 Entire Agreement.** The Terms and the Privacy Policy constitute the entire agreement between you and PRO-ED relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to the Terms or Privacy Policy made by PRO-ED as set forth herein.

**18.8 Disclosure.** The Site is hosted in the United States, and the services provided hereunder are offered by PRO-ED: 1301 W. 25<sup>th</sup> Street, Suite 300, Austin, TX 78705; [info@proedinc.com](mailto:info@proedinc.com).

**19. Acceptance and Consent.** I have read these Terms and Conditions of Use Agreement and have read and acknowledged the Privacy Policy before using the Site or registering for an account. Accordingly, I give my affirmative consent to and accept this Agreement.