

# INVOICE TERMS AND CONDITIONS

**DEFINITIONS.** "Seller" means Software FX, Incorporated. "Buyer" means individuals or organizations identified on the face of the invoice. "Software" means any computer software and related documentation available from Seller. Software includes computer software owned by Seller, third party computer software that has been provided for use in association with Seller's software and computer software that has been custom designed or modified for Buyer. "Products" means any or all Software, Goods and Services.

**SCOPE.** All sales by Seller shall be governed by the following terms and conditions of sale. The agreement shall consist only of the terms appearing herein and in the Seller's quote or proposal and any attachments, exhibits and supplements together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller. Terms and Conditions shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written, that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof. No Implied Acceptance. Notwithstanding any contrary provision in Buyer's purchase order, no action by Seller such as delivery of products, the rendering of services or the commencement of work on products to be specially manufactured for Buyer, will be deemed an acceptance by Seller of any purchase order from Buyer with terms different or additional than those contained in this contract.

**SOFTWARE.** All Software is provided to Buyer under license, it is not sold. All Buyers must use and transfer Software strictly in accordance with the terms and conditions in the applicable Software license agreements entered into with the Seller. The Software license agreements shall be specific to the Software provided and to its permitted uses. Until such Software license agreements are in place, and the terms therein accepted by the Buyer, the Buyer cannot use, copy, distribute or otherwise deal with any Software. Buyers who are end users of the Software, must accept the terms of the End User License Agreement ("EULA") which accompanies the Software, copies of which can be obtained from Seller at your request. Any Buyer who is unable or unwilling to accept the terms contained in any Software license agreement with the Seller must immediately return the Software and will receive a full refund. In no event shall these Terms convey any right, title, interest or license in, to or under the Software, or any associated intellectual property rights, over and above those contained in any Software license accepted by the Buyer. These Terms shall not be construed to imply a license to use the Software in the absence of a license. By these Terms, Seller expressly rejects any implied license to use the Software.

**TAXES.** All taxes, levies and duties of any nature whatsoever applicable to the Products supplied hereunder shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the relevant taxing authority. Unless otherwise specified, the prices shown do not include any taxes.

**PRICES AND PAYMENT.** All prices are subject to change without notice, except prices are in a written quote from Seller which if less than 60 days old shall be honored as stated therein. All Orders are also subject to credit approval before shipment. Where Buyer has established credit, payment shall be due thirty (30) days from the date of invoice. Overdue accounts shall bear interest at a rate equal to the lesser of one (1) percent per month compounded monthly (annual rate of 12.68%) or the highest rate permitted by applicable law. All amounts are stated, and payments are to be made, in United States currency unless otherwise agreed by the parties in writing. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If, in Seller's judgment, Buyer's financial condition does not at any time justify payment terms as previously specified, Seller may cancel or suspend any unfulfilled Order unless Buyer shall, upon written notice, immediately pay for any Products to be shipped or Services to be provided or pay in advance for all Products ordered but not shipped or provided, as applicable, or both, at Seller's option. If, despite any default by Buyer, Seller elects to continue to make shipments or provide Services and Products, Seller's action in so doing shall not constitute a waiver of any default by Buyer or in any way prejudice Seller's legal remedies for such default.

**SOFTWARE FX REFUND POLICY.** The products available for purchase on our web site are downloadable, fully-functional, and try-before-you-buy. We provide free trial periods to let you fully evaluate our products before you make a purchase decision. Please use the trial period to make sure that the software meets your needs before purchasing a license. All of our software is fully-functional during the trial period. None of our software requires registration to enable its primary functionality. If you purchase one of our products, after your payment has cleared you will receive an email with the serial number to install the software. Once this information is emailed to you, no refunds will be given. During your trial period, our support staff is available to assist in installation and configuration via email or telephone. We strongly recommend that all customers download, install, and test the trial version of any product prior to making a purchase. In rare instances and only within 30 days of purchase, if due to technical difficulties or platform incompatibilities the software will not function, we may, at our discretion, issue a refund and charge restocking fees of up to 15% of the total invoice amount. In such instances, we require that you provide enough information for us to positively identify your purchase transaction (e.g., order number, your company name, date of transaction, purchase code, number of licenses purchased, etc.). If we are able to positively identify your order, and if your request is made within 30 days of purchase, you must submit to us a letter of destruction of software on your company letterhead before we will process the refund. Software FX is not responsible for lost, delayed, or misdirected mail or email, delays for downloading, or other communication system delays.

**ACCEPTANCE OF THIS REFUND POLICY.** It is your responsibility to familiarize yourself with this refund policy. By placing an order for any of our products, you indicate that you have read this refund policy and that you agree with and fully accept the terms of this refund policy. If you do not agree with or fully accept the terms of this refund policy, we ask that you do not place an order with us. Please send any questions regarding our refund policy to sales@softwarefx.com.

**LIMITED WARRANTIES AND REMEDIES.** Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, replacing or repairing defective products or refunding the purchase price paid for

such products previously paid by Buyer, and Buyer's exclusive remedy for breach of any of such warranties will be enforcement of such obligation of Seller. These warranties will not extend to products subjected to misuse, abuse, neglect, damage, accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. Seller shall not be liable on any claim for defective products, which is not made within 30 days after such products have been received by Buyer. In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, Seller may request the return of the products and tender to Buyer the purchase price previously paid by Buyer, and in such event, Seller shall have no further obligation under the contract except to refund such purchase price upon redelivery of the products. No products may be returned without Seller's written request. If Seller requests the return of the products, the products will be redelivered to Seller at Buyer's expense by lowest cost mode of transportation unless otherwise authorized in writing by Seller. Seller reserves the right to inspect any claimed defect, repair or replace defective products, and perform any adjustment incident to satisfactory operation of the products. In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, and Seller has not delivered any products to Buyer, Seller may tender to Buyer the purchase price previously paid by Buyer, and, in such event, Seller shall have no further obligation under the contract except to refund such purchase price previously paid by Buyer. The remedies contained in this paragraph shall constitute the sole recourse of Buyer against Seller for breach of any of Seller's obligations under the contract, whether of warranty or otherwise. In no event shall Seller be liable for incidental, consequential or special damages, including without limitation, lost revenues, profits or recall expenses, nor shall Seller's liability on any claim for damages arising out of or connected with the contract or the manufacture, sale, delivery or use of the products exceed the purchase price of the products previously paid under this particular contract by Buyer to Seller.

**INDEMNIFICATION.** Buyer shall indemnify Seller against, and hold Seller harmless from, any and all liabilities, losses, damages, claims, costs and expenses, including reasonable attorney's fees (collectively "liabilities"), arising out of, connected with, or resulting from the products, including but not limited to, the design, manufacturing, selection, delivery, possession, use or operation of the products. Seller's entire liability for products is limited as set forth in paragraph above [Limited Warranties and remedies]. Buyer shall indemnify Seller against all liabilities involving alleged violation of patent rights relating to Buyer's specifications and/or the products resulting from those specifications. Buyer shall bear the full burden for all liabilities in any such instance.

**SELLER'S OWNERSHIP OF TECHNOLOGY.** Unless agreed otherwise in writing by Seller, Seller shall retain all right, title and interest in and to, and possession of, all its proprietary technology, including but not limited to, all copyright, patent, trade secret and other intellectual property rights associated with any ideas, concepts, methods, processes, techniques, inventions or works of authorship (including programs, Improvements and documentation) developed or created by or on behalf of Seller for furnishing Products under any Order accepted by Seller. Seller may use this proprietary technology in any of its Products, in whole or in part, even if the proprietary technology was developed expressly for use by Buyer. Buyer shall take such further actions, including the execution and delivery of instruments of conveyance, as may be reasonably requested by Seller, to give full and proper effect to the provisions of this Section and/or to obtain waivers of associated moral rights. Buyer shall own only the authorized modifications that it makes to Products, except for Improvements. Where used in these Terms, the word "Improvements" means work-arounds, error corrections or enhancements that are not specific to the intended use of the Products and that the Buyer discloses or suggests to Seller. All right, title and interest in and to Improvements shall be owned by Seller, unless Seller has otherwise expressly agreed in writing. Buyer acknowledges that it is under no obligation to make such disclosures or suggestions to Seller.

**SUBSTITUTIONS AND MODIFICATIONS.** Seller reserves the right to modify the specifications of Products designed by or for Seller, without notice, provided that the modification will not materially affect the performance, form, or fit of the affected Products.

**FORCE MAJEURE.** Neither Buyer nor Seller shall be liable for failures in performance, including delay or non-shipment, resulting from acts or events beyond its reasonable control. Such acts or events shall include, but shall not be limited to, acts of God, civil or military authority, civil disturbance, fire, hurricanes, earthquakes, strikes, lockouts or slowdowns, factory or labor conditions, errors in manufacture, inability to obtain necessary labor, materials or manufacturing facilities, delayed issuance of export control licenses, or other "force majeure" events beyond the reasonable control of the non-performing party. In the event of such delay, the date of shipment shall, at the request of Seller, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time.

**ASSIGNMENT.** Buyer may neither assign nor transfer its rights to any Order accepted by Seller, by operation of law or otherwise, without the prior written consent of Seller. Seller's affiliated companies may participate in Seller's performance hereunder.

**JURISDICTION.** This Agreement is governed by the laws of the State of Florida, the U.S. Copyright Act and other applicable U.S. federal laws. All disputes or legal proceedings relating to use of the SOFTWARE or this Agreement shall be brought and heard exclusively in the state or federal courts located in Palm Beach County, Florida, and by installing and/or using the SOFTWARE, you hereby irrevocably consent and submit to personal jurisdiction in such courts for all such disputes or legal proceedings.

**WAIVER.** No waiver by either party of any breach of any of these terms and conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

**EXPORT CONTROL.** Buyer agrees to comply with all applicable laws, rules and regulations and obtain all permits, licenses and authorizations or certificates that may be required in connection with its purchase or licensing of Products. This includes any laws, regulations, orders or other restrictions on the export of Products from the USA which may be imposed from time to time by the United States Governments. Buyer shall not export or re-export, directly or indirectly, Products or information pertaining thereto to any country for which either such government or any agency thereof requires an export license or governmental approval at the time of export or re-export without first obtaining such license or approval.