

SOFTCHOICE TERMS AND CONDITIONS FOR PRODUCTS

THIS AGREEMENT IS A BINDING CONTRACT AND APPLIES TO CUSTOMER'S PURCHASE OF PRODUCTS FROM SOFTCHOICE. NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY CUSTOMER TO SOFTCHOICE APPLY; SUCH ADDITIONAL OR DIFFERENT TERMS ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO AND REJECTION OF SUCH TERMS IS HEREBY GIVEN BY SOFTCHOICE.

BY MAKING A PURCHASE FROM OR PLACING AN ORDER WITH SOFTCHOICE, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS UNLESS CUSTOMER AND SOFTCHOICE HAVE AGREED TO A SEPARATE CONTRACT FOR THE RESALE OF PRODUCTS BY SOFTCHOICE TO CUSTOMER, IN WHICH CASE SUCH SEPARATE, FULLY-EXECUTED WRITTEN CONTRACT BETWEEN THE PARTIES OR CLICKTHROUGH CONTRACT PROVIDED BY SOFTCHOICE AND ACCEPTED BY CUSTOMER WILL GOVERN.

Orders placed by Customer are not binding until accepted by Softchoice. This Agreement is subject to change without prior notice; however, the version of this Agreement posted on the Website at the time that Customer placed an order will govern such order unless otherwise agreed in writing by Softchoice and Customer.

1. Definitions.

- a. *Agreement* means these terms and conditions;
 - b. *Customer* means the entity ordering and/or purchasing Products from Softchoice;
 - c. *Products* means products and services that Softchoice resells from Third Party Providers including but not limited to hardware, software, subscription services, updates, bug fixes, maintenance services, support services, warranty services and professional services;
 - d. *Softchoice* means Softchoice LP or Softchoice Corporation, as the case may be, and any of Softchoice LP's affiliates, subsidiaries or parent companies as the case may be;
 - e. *Terms of Use* means the terms and conditions or agreement between the Third Party Provider and the Customer applicable to Customer's use, subscription and/or receipt of the Product which may be in the form of an end user license agreement, terms of use or a separate negotiated agreement between the Customer and the Third Party Provider;
 - f. *Third Party Provider* means the manufacturer, distributor, licensor or provider of the Product which is resold by Softchoice, as the case may be; and
 - g. *Website* means this website or any other website operated by Softchoice.
2. **Reseller Only.** Customer acknowledges and agrees that: (i) the Products purchased by Customer are resold by Softchoice for Customer's use only (unless otherwise stated in the Terms of Use); and (ii) Softchoice is not the creator, manufacturer, distributor or licensor of the Products. In purchasing the Products, Customer is relying on the Third Party Provider's specifications only and is not relying on any statements or documents that may be provided by Softchoice.
3. **Warranty Disclaimer.** If applicable and permitted by the Third Party Provider, Softchoice will pass through to Customer any warranties provided to Softchoice by the Third Party Provider for a Product. This limited obligation to pass through warranties provided by the Third Party Provider to Customer is Customer's sole remedy and Softchoice's sole obligation in connection with representations, warranties and conditions related to Products. SOFTCHOICE MAKES NO WARRANTIES, REPRESENTATIONS OR CONDITIONS IN CONNECTION WITH THE PRODUCTS WHETHER EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE. Customer acknowledges that no employee of Softchoice is authorized to make any representation or warranty on behalf of Softchoice that is not in this Agreement.
4. **No Indemnification from Softchoice.** To the extent that a Third Party Provider provides indemnities to Softchoice, including but not limited to, indemnification against liability for infringement of a third party's proprietary rights, and to the extent that such Third Party Provider permits the transfer of such indemnities to

Customer, Softchoice will pass such indemnities through to Customer. Softchoice does not directly provide any indemnities in connection with the Products. Further, Customer expressly waives any claim that it may have or allege to have against Softchoice based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property right with respect to any Product and also waives any right to indemnification from Softchoice against any such claim made against Customer by a third party.

5. LIMITATION OF LIABILITY.

- a. SOFTCHOICE'S TOTAL AND AGGREGATE LIABILITY FOR ANY LOSS, DAMAGE, COST OR EXPENSE SUFFERED OR INCURRED BY CUSTOMER ARISING OUT OF OR IN CONNECTION WITH THE CUSTOMER'S ORDER OR PURCHASE OF PRODUCTS, SOFTCHOICE'S SUPPLY OF PRODUCTS OR THIS AGREEMENT IS HEREBY LIMITED TO THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING SUCH CLAIM; OR (B) TEN-THOUSAND (\$10,000.00) CANADIAN DOLLARS.
 - b. IN NO EVENT SHALL SOFTCHOICE BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES. SOFTCHOICE SHALL HAVE NO LIABILITY FOR THE FOLLOWING: (I) LOSSES OF REVENUE, INCOME, PROFIT OR SAVINGS; (II) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEMS(S) OR NETWORK(S), OR THE RECOVERY OF SUCH; (III) LOSS OF BUSINESS OPPORTUNITY; (IV) BUSINESS INTERRUPTION OR DOWNTIME; (V) LOSS OF GOODWILL OR REPUTATION; OR (VI) PRODUCTS NOT BEING AVAILABLE FOR USE OR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR OTHER GOODS.
 - c. The foregoing limitations, exclusions and disclaimers shall apply to any and all claims, regardless of whether the alleged or actual damages were foreseeable or a claim for such damages is based in contract, warranty, strict liability, negligence, tort or otherwise. Insofar as applicable law prohibits any limitation on liability herein, the parties agree that such limitation will be automatically modified, but only to the extent so as to make the limitation compliant with applicable law. The parties agree that the limitations on liabilities set forth herein are agreed and bargained-for allocations of risk and Softchoice's compensation for the Products reflects such allocations. Such limitations will apply notwithstanding the failure of the essential purpose of this Agreement or any remedy contained herein and even if a party has been advised of the possibility of any such failure or liability.
6. **Title and Acceptance.** Subject to the Terms of Use, title to hardware Products shall pass to Customer, and acceptance of the hardware Products shall occur, upon delivery of the hardware Products to the carrier (F.O.B. Origin). For greater certainty, title to software Products will remain with the applicable Third Party Provider (or its licensor), and Customer's rights therein are contained in the Terms of Use.
 7. **Payment Terms.** Unless otherwise agreed by Softchoice in writing, Customer shall pay the invoice it receives from Softchoice in respect of the Products purchased within thirty (30) days of the invoice date. Customer is responsible for any applicable sales, use, or other taxes, or federal, provincial, state or local fees or assessments associated with its purchase of Products. If Customer is purchasing Products for use in Canada, payments shall be made in the lawful currency of Canada; if Customer is purchasing Products for use outside of Canada, payments shall be made in the lawful currency of the United States. Customer hereby grants to Softchoice a security interest in the Products to secure payment in full. Customer authorizes Softchoice to file a financing statement reflecting such security interest. Softchoice reserves the right to make adjustments to pricing and Product offerings for reasons including, but not limited to, changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes, foreign exchange changes and fluctuations, and errors in advertisements. All orders are subject to Product availability. Therefore, Softchoice cannot guarantee that it will be able to fulfill Customer's orders.
 8. **Terms of Use.** All Products provided to Customer are subject to the applicable Terms of Use. Customer agrees to abide by the Terms of Use and will defend, indemnify and hold Softchoice harmless from any third party claim related to Customer's failure to abide by the Terms of Use.

9. **Delivery.** Softchoice cannot and does not guarantee that it can fulfill Customer's requests for Products. Delivery times are estimates only and Softchoice shall not be liable for delays.
10. **Returns.** All returns are subject to Softchoice's returns policy available on the Website, as amended from time to time. Softchoice will not be responsible for any Third Party Provider's refusal to accept the return of any Product for any reason.
11. **Export Sales.** Customer agrees that it will not divert, use, export or re-export such items contrary to any federal, state or provincial laws in Canada or the United States. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to Canadian or United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the applicable authority. Customer also expressly acknowledges and agrees that it will not export, reexport, or provide such items to entities and persons that are ineligible under Canadian or United States law to receive such items.
12. **Entire Agreement.** Subject to a separate, written, fully-executed agreement between Softchoice and Customer for the sale of Products or a click-through contract provided by Softchoice and accepted by Customer for the sale of Products, this Agreement contains the complete agreement between Softchoice and Customer relating to the purchase and provision of the Products and supersedes all prior negotiations, representations and understandings. For greater certainty, purchase orders issued by Customer are issued for administrative purposes only; terms and conditions contained in any such purchase order shall be null and void.
13. **Choice of Law.** This Agreement shall be governed by the laws in effect in the Province of Ontario, without regard to its conflict of laws rules. The parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and the Canadian federal courts located therein. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
14. **No Waiver.** No provision of this Agreement may be waived, by any act or omission of either Softchoice or the Customer, and this Agreement may not be amended except by the express written consent of both parties. For greater certainty, forbearance or indulgence by either Softchoice or the Customer in any regard shall not constitute a waiver of any provision of this Agreement.
15. **Assignment.** Customer may not assign this Agreement or any rights or obligations under this Agreement to a third party without the prior written consent of Softchoice.
16. **Language.** The Parties agree that this Agreement be drafted in the English language. *Les parties ont exigé que le présent contrat soit rédigé en langue anglaise.*
17. **Severability.** In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby.
18. **Force Majeure.** Except for a party's obligation to pay the other party any amount owed in accordance with this Agreement, neither party will be deemed to be in default hereunder or liable for a failure or delay in performance that is caused, in whole or in part, by circumstances including, acts of God, acts, omissions or delays of carriers, embargo, explosion, fire, flood, order of civil or military authority, disease, strike, lockout, war, Product unavailability, or any other causes beyond its control where such event renders impossible or delays a party's performance. In such an event that impacted party will promptly notify the other in writing and will use commercially reasonable efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement. Delivery and performance dates will be equitably extended to the extent of any such delays.