

PROFESSIONAL SERVICES TERMS AND CONDITIONS

All Professional Service Quotes (“**Quote**”) and Statements of Work (“**SOW**”) prepared by Commerx Computer Systems Inc. (“**Commerx**”) for its customers with a Commerx account (“**Customer**”) are subject to these Professional Services Terms and Conditions (“**Terms**”). Customer shall be deemed to have accepted, and agreed to be bound by, these Terms upon the occurrence of one of the following events: (i) Customer provides a purchase order to Commerx; (ii) Customer provides an email confirmation of acceptance of the Quote and such email must include a reference to the Quote number and associated price; or (iii) Customer signs a Professional Services SOW; whichever occurs first. Commerx may, from time to time and at its sole discretion, revise these Terms without notice to Customer by posting the revised Terms on its web site. The Terms posted on Commerx's web site on the date that one of the preceding events have occurred will govern that engagement.

All terms not otherwise defined herein shall have the meaning ascribed to them in the SOW.

1. **Acceptance.** Acceptance of Consulting Services will occur upon Commerx’s performance of the Consulting Services. Acceptance of Deliverables will occur upon delivery of the Deliverables to Customer or as otherwise set forth in the SOW.
2. **Change Management.** Requests by Customer and recommendations by Commerx for changes to the Consulting Services or Deliverables are subject to Commerx’s change management process and will become effective only upon mutual agreement by the parties in writing.
3. **Fees.** All fees are subject to change without notice and will be established at the time the Quote is entered into. Commerx will provide an updated Quote in the event of a price increase.
4. **Taxes.** Customer shall be responsible for all applicable federal, provincial, municipal, and other government taxes (such as sales, use, etc.). Unless otherwise specified, prices do not include such taxes.
5. **Payment.** Customer agrees to pay the total fees for the Consulting Services and Deliverables, plus any applicable taxes, fees and shipping. Each invoice shall be payable within thirty (30) calendar days of the date of the applicable invoice using Electronic Fund Transfer (EFT). Commerx will provide Customer the EFT details with the initial invoice for any new Customer. Any uncontested late payments may, at Commerx’s option, accrue interest at the rate of 1.5% per month (or the highest rate permitted by law, if less).
6. **Intellectual Property Rights.** Neither party will gain, by virtue of these Terms or the SOW, any rights of ownership in any copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other. Customer will retain exclusive ownership of all intellectual property rights, title and interest in any ideas, concepts, know how, documentation or techniques developed under the SOW. Customer will retain exclusive ownership of all data, deliverables and recommendations developed under the SOW. Commerx grants Customer a non-exclusive, non-transferable, royalty-free right to use the Deliverables solely in the countries in which Customer does business and solely for Customer’s internal use. Customer grants Commerx a non-exclusive, royalty-free license to use, copy, make derivative works of, distribute, display, perform, and transmit Customer's pre-existing copyrighted works or other intellectual property rights to the extent necessary for Commerx to perform its obligations under these Terms and the SOW.



7. **Acceptance of Software License Terms.** During the course of providing Consulting Services, Commerx may be required to install copies of third-party or Commerx-branded software products (the "Software"). As part of the installation process, Commerx may be asked to accept license terms accompanying the Software (collectively "Shrink-wrap Terms") on behalf of Customer. Shrink-wrap Terms may be in electronic format or contained within the Software documentation. Customer hereby acknowledges that it is Customer's responsibility to review Shrink-wrap Terms at the time of installation and hereby authorizes Commerx to accept all Shrink-wrap Terms on its behalf.
8. **Confidentiality.** Commerx and Customer agree that all information exchanged between them is not confidential unless they have entered into a separate confidentiality and non-disclosure agreement. Notwithstanding the foregoing, the parties agree that the content of any proposal letter is deemed confidential and Customer will treat it accordingly, protecting it from unauthorized disclosure. Customer also agrees not to duplicate or use the SOW or any portion thereof for any purpose other than to receive
9. **Warranties.** Commerx warrants that it will perform its services in a good and workmanlike manner using generally recognized commercial practices and standards applicable to similar engagements.
10. **Warranty Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, COMMERX CANNOT AND DOES NOT GUARANTEE OR MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WARRANTY OF TITLE, AND NON-INFRINGEMENT OF ANY THIRD PARTY RIGHTS INCLUDING INTELLECTUAL PROPERTY, WITH RESPECT TO ANY OF THE CONSULTING SERVICES AND DELIVERABLES, THIRD PARTY SOFTWARE OR EQUIPMENT, AND ALL WARRANTIES ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE OR THEIR EQUIVALENTS UNDER THE LAWS OF ANY JURISDICTION, AND CUSTOMER AGREES THAT ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED.
11. **Third Party Software and Hardware.** Commerx will have no liability to Customer arising from or relating to and does not warrant any hardware, software or materials supplied under another agreement or by third parties ("Third-Party Materials"), including, but not limited to, the selection thereof or failure of such Third-Party Materials to perform in accordance with specifications or any defects therein. Responsibility for the selection of Third-Party Materials, and any performance or functionality issues, or defects therein, will lie solely with Customer and/or the supplier(s) thereof.
12. **Liability and Limits.** COMMERX IS NOT IN ANY WAY LIABLE TO CUSTOMER FOR ANY LOSSES, DAMAGES OR DESTRUCTION OF DATA AND LOSS OF REVENUES THAT MAY OCCUR AS A RESULT OF THE CONSULTING SERVICES, DELIVERABLES OR THIRD-PARTY MATERIALS AND THAT EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, COMMERX IS NOT IN ANY WAY LIABLE TO CUSTOMER FOR ANY SUCH LOSSES OR DAMAGES. IN ADDITION AND EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS, COMMERX SHALL NOT BE LIABLE, AND ASSUMES NO RESPONSIBILITY FOR, ANY LOSS OR DAMAGE TO CUSTOMER RESULTING FROM: (A) FAILURES OF CUSTOMER'S SYSTEMS (INCLUDING, BUT NOT LIMITED TO, ANY FAILURE TO SECURE AND SAFEGUARD CUSTOMER'S SYSTEMS); (B) ANY ACCESS, INABILITY TO ACCESS, FAULT OR FAILURE CAUSED BY CUSTOMER'S SYSTEMS OR ANY THIRD PARTY SERVICE, SERVICE PROVIDER, NETWORK, INFORMATION CUSTOMER OR OTHER USER OR COMPUTING RESOURCE OF CUSTOMER; (C) UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT, LOSS, CORRUPTION OR DESTRUCTION OF ANY CONTENT, OTHER THAN DUE TO THE

NEGLIGENCE OR WILFUL MISCONDUCT OF COMMERX, ITS EMPLOYEES AGENTS OR SUPPLIERS; OR (D) ANY MALFEASANT OR WILFUL ACT OR OMISSION BY CUSTOMER OR OF ANY THIRD PARTY OTHER THAN COMMERX AGENTS OR SUPPLIERS.

IN NO EVENT SHALL COMMERX BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THE CONSULTING SERVICES, DELIVERABLES OR ANY THIRD-PARTY MATERIALS AND THESE TERMS, INCLUDING, BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST PROFITS, LOST REVENUES, LOST BUSINESS, OR GOODWILL, REGARDLESS OF THE FORM OF THE ACTION OR THE BASIS OF THE CLAIM, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THEIR ESSENTIAL PURPOSE, ANY BUSINESS OR ECONOMIC LOSS EXCEPT AS SPECIFICALLY PROVIDED HEREIN. IN THE EVENT THAT COMMERX IS FOUND TO HAVE ANY LIABILITY FOR DAMAGES UNDER THESE TERMS, THE TOTAL LIABILITY OF COMMERX FOR SUCH DAMAGES IS LIMITED TO DIRECT DAMAGES, IN AN AMOUNT EQUAL TO THE FEES PAID BY CUSTOMER TO COMMERX FOR THE CONSULTING SERVICES.

13. **Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Commerx, its suppliers, their affiliates, and the directors, officers, employees, successors and assigns of the foregoing (each a “**Commerx Indemnified Party**”) from and against any and all claims, actions, liabilities, losses, damages, costs and expenses, including reasonable outside lawyers’ fees arising from or in connection with any claim brought by a third party regarding: (a) any claims of infringement made against a Commerx Indemnified Party of any intellectual property right that occurred because of systems, products, services or other resources or items provided by Customer in connection with the SOW or these Terms; (b) any allegation, which, if true, would constitute a breach by Customer of any representation, warranty, covenant, term or condition of the SOW or these Terms; (d) breach by Customer of any applicable laws; (e) defamation, fraud, misrepresentation, disparagement or violation of any publicity or privacy rights by Customer; and (f) any gross negligence, willful misconduct or fraud on the part of Customer or any of its representatives.
14. **Timelines of Action.** In no event will any action be brought against Commerx more than one (1) year after the cause of action has accrued.
15. **Allocation of Risk.** The parties understand and agree that, to the extent permitted by applicable law, the foregoing exclusions and limitations of liability represent the parties’ agreement as to allocation of risk between them in connection with their respective obligations under these Terms. The fees payable to Commerx reflect, and are set in reliance upon, this allocation of risk and the exclusions and limitations of liability set forth herein.
16. **Term and Termination.** These Terms will remain in effect until completion of the Consulting Services, unless terminated earlier in accordance with these Terms.
17. **Termination.** The SOW and these Terms may be terminated immediately upon written notice if any of the following events occur:
 - 17.1 By either party if the other party materially breaches or materially fails to perform of any of its obligations hereunder and fails to remedy such breach within thirty (30) days after the other party has given written notice thereof;

- 17.2 By Commerx, if Customer fails to pay any amount due to Commerx pursuant to the SOW or hereunder and does not cure such default within ten (10) days of the date payment is due. Commerx may suspend performance of Consulting Services during the cure period without prejudice to its right to terminate hereunder. Notwithstanding the foregoing, the Customer shall not be required to pay Commerx if Commerx fails to perform all or part of the SOW, or performs all or part of the SOW in deficient, negligent or an improper manner, or not in accordance with the requirements of the engagement; or
- 17.3 By either party, if a receiver, liquidator or trustee of the other party is appointed by court order or receivership, insolvency or bankruptcy proceedings are commenced or a petition is filed by or against the other party under any applicable liquidation, conservatorship, bankruptcy, moratorium, insolvency, reorganization or similar laws, or the other party makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts generally as they become due, or otherwise takes any action or causes any action to be taken which the other party reasonably believes will cause the acting party to be unable to perform its financial obligations hereunder.
18. **Termination for Convenience.** These Terms and the SOW may be terminated by either party at any time and for any reason upon five (5) calendar days' prior written notice.
19. **Rights After Termination.** Upon termination of the SOW and these Terms, Customer will pay Commerx for all Consulting Services performed and charges and expenses incurred by Commerx up to the date of termination, and Customer will receive all work in progress for which Customer has paid.
20. **Dependencies.** Customer will comply with the general obligations specified in these Terms, together with any specific Customer obligations described in the SOW, in a timely manner. Customer acknowledges that Commerx's ability to deliver the Consulting Services is dependent upon Customer's full and timely cooperation with Commerx, as well as the accuracy and completeness of any information and data Customer provides to Commerx. Customer agrees that, to the extent its failure to meet its responsibilities results in a failure or delay by Commerx in performing its obligations under the SOW or these Terms, Commerx will not be liable for such failure or delay.
21. **Good Faith Cooperation.** The parties acknowledge that successful completion of the Consulting Services will require their full and mutual good faith cooperation. Where agreement, approval, acceptance, consent or similar action by either party is required by any provision hereof, such action will not be unreasonably delayed or withheld.
22. **Similar Services.** Nothing in these Terms will prohibit Commerx from providing Consulting Services similar to those provided hereunder to other customers provided that Commerx shall not infringe on any intellectual property right of the Customer.
23. **Non-Solicitation.** During the term of these Terms and the SOW and for a period of one (1) year following the termination or expiration of these Terms or the SOW, each party shall not solicit, seek out or employ, either directly or indirectly (as a consultant, independent contractor or otherwise) any employee or consultant engaged by the other party who is or was associated with the performance of the other party's obligations pursuant to these Terms and the SOW.

24. **Export Regulations.** Customer will comply with all applicable export and import laws of all countries involved in the sale of any products or any resale of any products by Customer. Customer assumes all responsibility for shipments of any products requiring any government import clearance.
25. **No Publicity.** Neither party will publicize or disclose to any third party without the prior written consent of the other party either the fees or other terms of the SOW or its existence and execution, except as necessary to comply with other obligations stated in these Terms or the SOW. Notwithstanding the foregoing, Commerx may use Customer's name and identify its engagement in connection with general lists of clients and experience.
26. **Independent Contractor.** The parties acknowledge and agree that Commerx and Customer are independent contractors and will have no power, nor will either party represent that it has any power, to bind the other party or to assume or to create any obligation or responsibility, express or implied, on behalf of the other party or in the other party's name. These Terms will not be construed as constituting Commerx and Customer as partners, joint venture or agents or to create any other form of legal association that would impose liability upon one party for the act or failure to act of the other party.
27. **Assignment.** Except with respect to Commerx's rights regarding the use of subcontractors, neither party may assign all or any portion of its rights or obligations under these Terms or any SOW without the prior written consent of the other party, provided however that Commerx may assign its rights and obligations hereunder to an affiliated entity at any time upon written notice to Customer. These Terms will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
28. **Force Majeure.** Neither party will be liable for any delay in performance or failure to perform due to any reason beyond the reasonable control of either party, or its sources, such as fire, explosion, accident, flood, labour trouble, weather condition, any regulation, rule or act of any government or governmental agency, or the inability to obtain or shortage of suitable material, components, parts, equipment, machinery, fuel, power, communication facilities or transportation, act of god, armed conflicts, civil commotion or any other cause of like character, provided that such party has taken all reasonable and customary measures to avoid the occurrence of, or to prevent or mitigate the effects of, any such delays or nonperformance. In any such event, the affected party shall promptly notify the other party and shall use its best efforts on a continuous basis to remedy the failure or delay.
29. **Notices.** Any and all notices required to be delivered hereunder shall be sent by email to the email address set below ("**Email Notification**"), or by registered or certified mail, postage prepaid, return receipt requested or by nationally-recognized overnight courier service to the address set below ("**Mail Notification**"). Any such notification shall be deemed effective: (i) upon transmission when delivered by Email Notification; or (ii) when delivered by Mail Notification.

COMMERX

2880 Argentia Road, Unit #1,
Mississauga, Ontario L5N 7X8

Attention: Sales Operations

Email: SalesOperations@commerx.ca



30. **No Waiver.** No waiver of any provision of these Terms is binding unless it is in writing and signed by all parties entitled to grant the waiver.
31. **Invalidity.** If any provision of these Terms or the SOW is determined to be illegal, invalid or unenforceable, the provision will be ineffective only to the extent of the illegality, invalidity or unenforceability without affecting the validity or the enforceability of the remaining provisions of these Terms or the SOW.
32. **Precedence.** In the event of conflict between the provisions of these Terms and the SOW, including any proposal letter, the provisions herein will, to the extent of such conflict, take precedence unless the SOW expressly states that it is amending these Terms, and was executed by duly authorized representatives of both parties.
33. **Entire Agreement.** The SOW, including any proposal letter or purchase order, Confidentiality Agreement and these Terms constitute the entire agreement between Commerx and Customer and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter hereof. Customer's additional or different terms and conditions will not apply.
34. **Survival of Provisions.** Sections 4 to 15 of these Terms, and all provisions relating to proprietary rights, confidentiality, non-disclosure, and non-solicitation will survive the completion of the Consulting Services or any termination of these Terms or the SOW or purchase order.
35. **Applicable Law.** These Terms and the SOW, or purchase order, will be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the applicable laws of Canada. The parties hereby agree that the exclusive forum for all disputes related to or arising out of these Terms shall be the courts in Toronto, Ontario.