

TERMS AND CONDITIONS OF SALE

All sales of hardware, software, and third-party services and support (each a "**Product**" and collectively, the "**Products**") made by Commerx Computer Systems Inc. ("**Commerx**") to its customers with a Commerx account ("**Customer**") are subject to these Terms and Conditions of Sale ("**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 email confirmation of acceptance of a quote from Commerx and such email must include a reference to the quote number and purchase price; or (iii) Customer accepts the product(s) from Commerx; 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 at the time one of the preceding events have occurred will govern the sale.

1. **Price.** All prices are subject to change without notice and will be established at the time of order acceptance by the Product manufacturer or third-party supplier. Commerx will provide an updated quote in the event of a price increase.
2. **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.
3. **Recycling Fees.** Customer shall be responsible for all applicable recycling fees to be remitted by Commerx under any provincial electronic waste recycling program. Unless otherwise specified, prices do not include such fees. Charges for such fees, if applicable, will be listed on the Product invoice from Commerx.
4. **Payment.** Customer agrees to pay the total purchase price for the Products, 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 Product 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).
5. **Delivery, Title, and Risk of Loss.** Commerx will use commercially reasonable efforts to meet Customer's requested delivery date(s) but does not guarantee delivery by a stated date or time and is not responsible for any damages due to delays or the failure to meet a stated delivery schedule. Unless otherwise agreed in writing by the parties, Commerx shall deliver the Products to Customer using Commerx's standard method for packaging and shipping such Products. Commerx shall not be liable for any non-delivery of Products (even if caused by Commerx's negligence) unless Customer gives notice to Commerx of the non-delivery within five (5) business days of the date when the Products would in the ordinary course of events have been received. Any liability of Commerx for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

Customer shall examine all Products upon receipt and shall notify Commerx, as specified herein, of all discrepancies or, if rejection of the Product(s) is intended, within two (2) business days of receipt. Such notice shall specify the discrepancy or reason for rejection. Failure by Customer to give such notice in accordance with these Terms shall be deemed to be acceptance of the Product(s) as of the date of receipt. Customer assumes the risks of loss and damage to any Product(s) that has been delivered to its premises. Upon delivery, Commerx shall be considered to have carried out its obligations relating to the Product(s) under these Terms.

Title to Products and risk of loss passes to Customer upon delivery of the Products to Customer. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Commerx a lien on and security interest in and to all the right, title and interest of Customer in, to and under the Products, wherever located, and whether now existing or hereinafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Ontario *Personal Property Security Act*.

By installing or using the Products, Customer agrees that any software included with the Products purchased is licensed strictly in accordance with the terms provided by the original equipment manufacturer ("OEM").

- 6. Return Policy.** The return of Product(s) purchased from Commerx are subject to the manufacturer or distributor return policies, which may provide for limited or no returns of Products. If the manufacturer or distributor accepts returns, Commerx will assist in the Product(s) return or replacement. Any return shipping charges will be at Commerx's discretion and will be dictated by the reason for the return.

If the Customer fails to return the Product within the applicable Commerx return guideline period, as outlined below, the Product is considered to be accepted by the Customer and is not returnable.

Commerx Return Policy Guidelines:

Hardware: May be returned within thirty (30) days of the date of receipt if it is unopened and still in the manufacturer's sealed package.

Software: Software may only be returned if permitted by the distributor's return policy. If not, Customer cannot return the software to Commerx.

Order Discrepancies. All order discrepancies must be reported to Commerx Sales Operations within two (2) business days of receipt of Product(s).

Defective or Dead on Arrival (DOA). DOAs must be reported to the Commerx Sales Operations within five (5) business days of receipt of Products.

Damaged Products. Customer is responsible to have the damaged packaging noted on the freight carrier's delivery record. If the damaged packaging appears to have damaged the Product, the Customer should refuse acceptance from the freight carrier. If the Product damage is not detected until the packaging has been removed, then the Customer should immediately notify the Commerx Sales Operations.

In all cases, the Commerx Sales Operations will be the single point of contact and will provide the appropriate instructions for return, if applicable. The Customer must obtain a RMA number from Commerx Sales Operation before any product is returned and they must ensure that the assigned RMA number is on the return packing slip. Commerx reserves the right to apply a restocking fee, not to exceed 25% of the list price of the returning product, and will be based on the Manufacturer or Distributors return policy.

7. **Disclaimers.** Product warranties, if any, are provided by the manufacturer or third-parties supplier of the Products. 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 PRODUCTS, 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.
8. **Liability and Limits.** COMMERX IS IN 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 PRODUCTS, 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 OF THE PRODUCTS 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 PRODUCTS 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 PURCHASE PRICE OF THE PRODUCT PAID BY CUSTOMER TO COMMERX.

9. Indemnification.

- a. **By Commerx.** Commerx shall indemnify, defend and hold harmless Customer and its directors, officers, employees, successors and assigns (each a “**Customer Indemnified Party**”) against any and all claims, actions, liabilities, losses, damages, costs and expenses, including reasonable outside lawyers’ fees (collectively, “Losses”) arising from or in connection with any allegation, which, if true, would constitute a breach by Commerx of any representation, warranty, covenant, term or condition of these Terms.
 - b. **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 Losses 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 these Terms; (b) any allegation, which, if true, would constitute a breach by Customer of any representation, warranty, covenant, term or condition of 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.
 - c. **Procedures.** The indemnification obligations on the part of either party are conditional upon: (i) the indemnifying party being notified in writing promptly of the indemnified party’s receipt of notice of the claim (provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its indemnification obligations under this Section 9, except to the extent of any material prejudice to the indemnifying party as a direct result of such failure); (ii) the indemnifying party having sole control over the defense or settlement of such claim; and (iii) the indemnifying party being given the necessary authorization, information and full co-operation and assistance by the indemnified party for the defense of same (at the indemnifying party’s cost); provided in all cases, however, that the indemnifying party shall not enter into any settlement or compromise of any such claim in the event such settlement or compromise imposes any liability or obligation on the indemnified party without such indemnified party’s prior written consent.
10. **Termination.** Customer may cancel any order for Product at no charge up to two (2) business days prior to scheduled shipment upon written notice to Commerx, unless such Product has been assembled or reconfigured in accordance with Customer specifications. Cancellation of orders following shipment must be made in accordance with the return policies of the manufacturer or third-party supplier of the Product.
11. **Rights After Termination.** Upon termination of any order which includes third party services, Customer will pay Commerx for all 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.
12. **Export Regulations.** Customer will comply with all applicable export and import laws of all countries involved in the sale of the Products or any resale of the Products by Customer. Customer assumes all responsibility for shipments of Products requiring any government import clearance.

13. **No Publicity.** Neither party will publicize or disclose to any third party without the prior written consent of the other party the price of the Product(s).
14. **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.
15. **Assignment.** Commerx may assign or subcontract all or any portion of its rights or obligations with respect to the sale of Products. The Customer may not assign these Terms or any of its rights or obligations without the prior written consent of Commerx. These Terms will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and permitted assigns.
16. **Force Majeure.** Commerx will not be liable for any delay in performance or failure to perform due to any reason beyond the reasonable control of Commerx, 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 Commerx 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, Commerx shall promptly notify the other party and shall use its best efforts on a continuous basis to remedy the failure or delay.
17. **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

18. **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.
19. **No Third-Party Beneficiaries.** These Terms are for the sole benefit of the parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.



20. **Invalidity.** If any provision of these Terms 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.
21. **Precedence.** In the event of any conflict between the provisions of these Terms and any purchase order or statement of work, the provisions herein will, to the extent of such conflict, take precedence unless the purchase order or statement of work expressly states that it is amending these Terms, and was executed by duly authorized by representatives of both parties.
22. **Applicable Law.** These Terms 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.
23. **Entire Agreement.** These Terms, including any purchase orders or statements of work, constitute the entire agreement between Commerx and Customer regarding the purchase of Products 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.