

Terms & Conditions of Sale

TSFactory - Terms and Conditions of Sale

PLEASE READ THESE TERMS AND CONDITIONS OF SALE VERY CAREFULLY.

THE TERMS AND CONDITIONS OF SALE ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS IN ANY FORMS DELIVERED BY CUSTOMER ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS AND SERVICES DESCRIBED IN TSFACTORY'S INVOICE OR OTHER TSFACTORY DOCUMENTATION, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE TERMS AND CONDITIONS OF SALE UNLESS CUSTOMER AND TSFACTORY HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

Important Information About These Terms and Conditions of Sale

These terms and conditions of sale constitute a binding contract between you ("Customer") and TSFactory. Customer accepts these terms and conditions of sale by making a purchase, placing an order or otherwise shopping on TSFactory's Website (the "Site"). These terms and conditions of sale are subject to change without prior notice, except that the terms and conditions of sale posted on the Site at the time Customer initially places or modifies an order will govern the order in question.

These terms and conditions of sale constitute the entire agreement between Customer and TSFactory relating to the terms and conditions of sale of products and services on the Site. Customer consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting TSFactory at the address provided below.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. Customer agrees that the terms and conditions of sale contained herein and in TSFactory's invoice or other documentation will control. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these terms and conditions of sale or any purchase order or invoice related thereto.

Governing Law

THESE TERMS AND CONDITIONS OF SALE AND ANY SALE HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION OR LITIGATION WILL BE BROUGHT IN WAKE COUNTY, NORTH CAROLINA AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN WAKE COUNTY, NORTH CAROLINA AND SUBMITS TO THE JURISDICTION THEREOF AND WAIVES THE RIGHT TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING.

Risk of Loss

If Customer provides TSFactory with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for TSFactory, title to products and risk of loss or damage during shipment passes from TSFactory to Customer upon shipment from TSFactory's facility (F.O.B. Origin, freight collect). For all other shipments, title to products and risk of loss or damage during shipment passes from TSFactory to Customer upon receipt by Customer (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s) and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer. TSFactory retains a security interest in the products until payment in full is received. Customer will be responsible for all shipping and related charges.

Export Sales

If this transaction involves an export under the Export Administration Regulations, the commodities, technology and/or software sold or distributed under these terms and conditions of sale exported from the United States by TSFactory were exported in accordance with the Export Administration Regulations. Diversion, use, export or re-export contrary to United States law is prohibited. The commodities, technology and/or software sold or distributed under these terms and conditions of sale may not be exported or re-exported to Cuba, Iran, Iraq, Libya, Sudan, North Korea or Syria or to entities and persons that are ineligible under United States law to receive United States commodities, technology and/or software. In addition, manufacturers' warranties for exported products may vary or may be null and void for products exported outside the United States.

Warranties

Customer understands that TSFactory is not the manufacturer of the products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not TSFactory. In purchasing the products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, specifications, photographs or other illustrations representing the products that may be provided by TSFactory or its affiliates. In connection with services, neither affiliates of TSFactory nor third party service providers are agents of TSFactory and TSFactory has no obligation or liability arising from any services performed by or any warranty, if any, made by, such service providers. TSFACTORY AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS SOLD OR SERVICES PROVIDED BY THIRD PARTIES OR AFFILIATES OF TSFACTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF NONINFRINGEMENT. THIS DISCLAIMER DOES NOT AFFECT THE TERMS OF THE MANUFACTURER'S WARRANTY, IF ANY.

Internet Disclaimer

Internet connectivity requires access services from an Internet access provider. Contact your local access provider for details.

56K Disclaimer

56K modems are capable of 56Kbps downloads, however, current regulations limit download speed to 53Kbps.

Pricing Information; Availability Disclaimer

All pricing is subject to change. TSFactory reserves the right to make adjustments to pricing, products and service offerings for reasons including, but not limited to, changing market conditions, product discontinuation, product unavailability, manufacturer price changes and errors in advertisements. All orders are subject to product availability. Therefore, TSFactory cannot guarantee that it will be able to fulfill Customer's orders.

Limitation of Liability

NEITHER TSFACTORY NOR ITS AFFILIATES WILL BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. NEITHER TSFACTORY NOR ITS AFFILIATES WILL BE LIABLE FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE OR THE PROVISION OF SERVICES BY THIRD PARTIES. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF PRODUCTS OR SERVICES PROVIDED BY TSFACTORY OR ITS AFFILIATES, NEITHER TSFACTORY NOR ITS AFFILIATES WILL BE LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES IN EXCESS OF THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) OR SERVICE(S) GIVING RISE TO THE CLAIM; OR (B) \$50,000.

TSFactory will not be responsible for any delays in delivery which result from any circumstances beyond its control, including without limitation, product unavailability, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, general insurrection, acts of God or acts of any government or agency. Any shipping dates provided by TSFactory are estimates only.

Third Party Services

Customer acknowledges and agrees that, in some instances, TSFactory and its affiliates are resellers of services and are not the provider of those services. In those cases, the third party service provider is the only party responsible for providing services to Customer. In those cases, Customer will look solely to the third party service provider for any loss, claims or damages arising from or relating to the purchase or provision of such services. Customer hereby releases TSFactory and its affiliates from any and all claims arising from or relating to the purchase or provision of any such services by third party service providers. Services may be subject to tax.

Arbitration

Any claim, dispute, or controversy (whether in contract, tort or otherwise, whether preexisting, present or future, and including statutory, common law, intentional tort and equitable claims) arising from or relating to the products or services sold pursuant to these terms and conditions of sale, the interpretation or application of these terms and conditions of sale or the breach, termination or validity thereof, the relationships which result from these terms and conditions of sale (including, to the full extent permitted by applicable law, relationships with third parties who are not signatories hereto), or TSFactory's advertising and marketing (collectively, a "Claim") WILL BE RESOLVED, UPON THE ELECTION OF TSFACTORY, CUSTOMER OR THIRD PARTIES INVOLVED, EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION. If arbitration is chosen, it will be conducted pursuant to the Rules of the American Arbitration Association, with offices in Raleigh, North Carolina. If arbitration is chosen by any party with respect to a Claim, neither TSFactory nor

Customer will have the right to litigate that Claim in court or to have a jury trial on that Claim or to engage in pre-arbitration discovery, except as provided for in the applicable arbitration rules or by agreement of the parties. Further, Customer will not have the right to participate as a representative or member of any class of claimants pertaining to any Claim. Notwithstanding any choice of law provision included in these terms and conditions of sale, this arbitration agreement is subject to the Federal Arbitration Act (9 U.S.C. ?? 1-16). The arbitration will take place in Raleigh, NORTH CAROLINA. Any court having jurisdiction may enter judgment on the award rendered by the arbitrator(s). Each party will bear its own cost of any legal representation, discovery or research required to complete arbitration. The existence or results of any arbitration will be treated as confidential. Notwithstanding anything to the contrary contained herein, all matters pertaining to the collection of amounts due to TSFactory arising out of sales hereunder will be exclusively litigated in court rather than through arbitration.

Orders; Payment Terms; Interest; Taxes

Orders are not binding upon TSFactory until accepted by TSFactory. Terms of payment are within TSFactory's sole discretion. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice. TSFactory may invoice Customer separately for partial shipments. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1 1/2%) per month or at the highest rate allowed by law. Customer is responsible for, and will indemnify and hold TSFactory harmless from, any applicable sales, use, transaction, excise or similar taxes (but not taxes imposed or measured by TSFactory's net income), and from any federal, state or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with the order. Customer must claim any exemption from such taxes, fees or charges and must provide TSFactory with the necessary supporting documentation at the time of purchase. Any sales, use or other applicable tax or fees or assessments is based on the location to which the order is shipped. In the event of a payment default, Customer will be responsible for all of TSFactory's costs of collection, including court costs, filing fees and attorney's fees.

Return Privileges

TSFactory customer return requests must be made within 30 days of invoice date.

Please return all products 100% complete. This includes manufacturer box, UPC label, packing materials, all manuals, blank warranty cards and accessories.

Return privileges are contingent upon various manufacturer policies. TSFactory reserves the right to decline return requests based on those policies. Please verify policies for specific item(s) with a member of Customer Relations.

Please contact TSFactory Customer Relations at 866-344-6267 during normal business hours, EST or via e-mail at customerservice@cns-software.com, to obtain a Return Merchandise Authorization (RMA) before shipping product back to TSFactory. This will expedite and help ensure the proper action or credit upon processing.

In order to expedite a return, please have the following information on hand when requesting an RMA number: Customer number, invoice number, serial number, reason for return, action to take (replacement/repair/return/credit) and whether the box has been opened or is manufacturer sealed. Please do not write on or damage the manufacturer box.

Customer is responsible for shipping charges to TSFactory's distribution center for all products being shipped back to TSFactory. Products exchanged or replaced will be shipped by TSFactory to Customer, at TSFactory's expense, using the same shipping method as was used by Customer to ship the original products back to TSFactory. If the carrier selected by Customer is not used by TSFactory, a comparable shipping method will be selected.

Customer is responsible for all risk of loss and damage to products being shipped back to TSFACTORY. Please fully insure return shipment in case of loss or damage. Please use a carrier that is able to provide you with proof of delivery such as UPS, Federal Express or DHL. This is for your protection as well as to ensure quick action on your return.

Return shipping address:

CNS

Attn: Returns Department

(Place your RMA number on this line)

164 Quade Drive

Cary, NC 27513

Failure to return a product within the applicable return period will be deemed to be an acceptance of the product.

Damaged Products

If Customer receives damaged products, please refuse the products upon original delivery attempt. If damaged products are accepted from the carrier, such damage should be noted on the carrier delivery record. Please save the product and the original box and packaging and notify TFACTORY immediately to arrange for a carrier inspection and a pick up of damaged products. Please notify TFactory Customer Relations at customerrelations@cns-software.com of damaged products WITHIN THE FIRST 10 DAYS of receipt. Timely receipt of this information is necessary for TFactory to file a damage claim.

Check Payment Policy

TFactory will accept personal or business checks up to \$12,000, subject to verification. TFactory will accept personal and business checks for prepay orders. Allow 10 business days for clearing.

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