

# **TERMS AND CONDITIONS FOR SALE OF PRODUCTS AND SERVICES**

## **Introduction**

By using this Website for purchasing services or products using CAPSYS Capture or any web-based application, you ("you" or "Customer") have consented to the following terms and conditions which shall apply to all products and services acquired from CAPSYS (hereinafter this "Agreement"):

Any additional or different terms or conditions in any form 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, statement of work or other CAPSYS documentation to provide product or perform or procure any services, Customer agrees to be bound by and accepts these terms and conditions unless Customer and CAPSYS have signed a separate agreement, in which case the separate agreement will govern.

CAPSYS is not responsible for manufacturer availability of products or typographical errors. Brand names and product names are trademarks or registered trademarks of their respective companies. All product specifications and order numbers are subject to change without notice. Every effort has been made to ensure the accuracy of all product descriptions and specifications. CAPSYS makes no warranty expressed or implied with respect to the accuracy of the information including price product editorials or product descriptions or specifications. Product and manufacturer names are used only for the purpose of identification. Illustrations are for presentation purposes only and may be different from the actual product.

Shipping, handling, and insurance (if applicable) are additional charges that will be added to the total order. If any specific shipping methods are desired please make this request at the time of placing the initial order. Damages occasionally occur during transit. Freight carriers are liable for damages only when the damages are indicated on the Bill of Lading prior to signature of receipt of goods. Therefore you are required to inspect all packages prior to accepting delivery of goods.

## **Limited Warranty**

ALL PRODUCTS AND SERVICES ARE PROVIDED "AS IS." CAPSYS MAKES NO WARRANTIES OR REPRESENTATIONS AS TO THE PERFORMANCE OF ANY OF SAID PRODUCTS AND SERVICES, NOR IS ANY PERSON AUTHORIZED TO ASSUME ANY LIABILITY OR MAKE ANY PROMISE OR OFFER IN CONFLICT WITH THE FOREGOING IN CONNECTION WITH THE SALE OF THESE PRODUCTS OR SERVICES. ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY EXCLUDED. CAPSYS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGES CLAIMED TO HAVE RESULTED FROM THE USE, OPERATION, SERVICING ON, OR PERFORMANCE OF THESE PRODUCTS OR SERVICES REGARDLESS OF THE FORM OF ACTION.

NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, THE MAXIMUM LIABILITY OF CAPSYS TO ANY PERSON OR ENTITY WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY SALE, SERVICING, LICENSE, USE, OR OTHER EMPLOYMENT OF ANY OF THE PRODUCTS OR SERVICES DELIVERED HEREUNDER WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT, OR OTHERWISE SHALL IN NO CASE EXCEED THE ACTUAL AMOUNT PAID TO CAPSYS HEREUNDER FOR THE SPECIFIC PRODUCT OR SERVICE THAT CAUSED THE DAMAGES. IN NO EVENT SHALL CAPSYS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR FROM ANY DAMAGE RESULTING FROM LOSS OF DATA OR PROFITS. IN NO EVENT WILL CAPSYS BE LIABLE FOR DAMAGES CAUSED BY CUSTOMER'S NEGLIGENCE OR FOR ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF CAPSYS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST CUSTOMER BY ANY OTHER PARTY.

SOME STATES HAVE LAWS WHICH REQUIRE WARRANTY AND LIABILITY RIGHTS DIFFERENT FROM THOSE STATED HEREIN. IN SUCH STATES THE MINIMUM REQUIRED WARRANTY AND LIABILITY TERMS MAY APPLY.

**CAPSYS Capture**

To the extent CAPSYS may be utilizing its proprietary CAPSYS Capture software in connection with its performance under the terms of this Agreement, unless covered by a separate license agreement executed by the parties, Customer shall have no right, title or interest in or to the CAPSYS Capture software, including but not limited to any additions, enhancements or modifications thereto regardless as to whether such additions, enhancements, or modifications were made specifically in connection with the services performed under this Agreement.

**Payment**

Orders are not binding upon CAPSYS until accepted by CAPSYS. Customer shall pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay for, and will indemnify and hold CAPSYS harmless from, any applicable sales, use, transaction, excise or similar taxes and 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 any Statement of Work, products, or services. In the event of a payment default, Customer will be responsible for all of CAPSYS's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, CAPSYS reserves the right to suspend services until payment is received.

**Entire Agreement**

This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written. No provision of this Agreement or any Statement of Work will be deemed waived, amended or modified by either party unless such waiver, amendment or modification is in writing and signed by both parties.

**Assignment**

CAPSYS may assign or subcontract all or any portion of its rights or obligations with respect to the sale of products or the performance of services or assign the right to receive payments, without Customer's consent. Customer may not assign any of its rights or obligations herein without the prior written consent of CAPSYS. Subject to the restrictions in assignment contained herein, these terms and conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns.

**Notices**

Notices provided under this Agreement will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by U.S first-class mail or one (1) day after such notice is sent by courier or facsimile transmission. Any delay or failure by either party to exercise any right or remedy will not constitute a waiver of that party to thereafter enforce such rights.

**Limitation of Actions**

No action, regardless of form, may be brought by either party more than one (1) year after the cause of action has arisen except in the case of any action for nonpayment by Customer which may be brought within five (5) years from the date the last payment was due.

**Applicable Law; Forum Selection**

The laws of the State of Illinois shall govern interpretation of this Agreement and the parties agree that any action arising out of the sale or service of any products shall be filed in DuPage County, Illinois.

Customer agrees that it will not divert, use, export or re-export any products envisioned by this Agreement contrary to United States law.

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