

# Terms of Sale

This document provides details of Tech Soft 3D Software products Terms of Sale.

## Terms of Sale

**These terms of sale ("terms") apply to all offers, sales and purchases of products (including, without limitation, software) ("products") or services ("services") which are sold through the website on which we post these conditions ("site") by: (a) us, Tech Soft 3D, Inc. (References to "us", "we" or "our" being construed accordingly) the seller, to (b) you, the purchaser (references to "you" or "your" being construed accordingly).**

All purchases are final, non-cancelable and non-refundable.

### **1. Offer, Acknowledgment and Acceptance.**

- 1.1 Any prices, quotations and descriptions made or referred to on this site are subject to availability, do not constitute an offer and may be withdrawn or revised at any time prior to our express acceptance of your order (as described below).
- 1.2 While we make every effort to ensure that items appearing on the site are available, we cannot guarantee that all items are in stock or immediately available when you submit your order. We may reject your order (without liability) if we are unable to process or fulfill it. If this is the case, we will refund any prior payment that you have made for that item.
- 1.3 An order submitted by you constitutes an offer by you to us to purchase products or services on these terms and is subject to our subsequent acceptance.
- 1.4 Prior to such acceptance, an automatic e-mail acknowledgement of your order may be generated. Please note that any such automatic acknowledgement does not constitute acceptance of your order.
- 1.5 Our acceptance of your order takes effect and the contract concluded at the point where such offer is expressly accepted by us dispatching your order/commencing services and accepting your credit card or other payment ("**acceptance**").
- 1.6 We may keep records of orders received, acknowledgements, acceptances and other contract records for a reasonable period after acceptance. We may be able to provide you with copies on written request; however, you must make sure you print a copy of all such documents and these terms for your own records.

### **2. Your Representations.**

- 2.1 You represent that information provided by you when placing your order is up-to-date materially accurate and is sufficient for us to fulfill your order.
- 2.2 You are responsible for maintaining and promptly updating your account information with us for accuracy and completeness and keeping such information (and any passwords given to you for the purposes of accessing the site and/or purchasing products) secure against unauthorized access.
- 2.3 Unless agreed otherwise or required by applicable law, any warranties provided in relation to products or services only extend to you on the understanding that you are

a user and not a reseller of those products or services.

- 2.4 No warranty, commitment or any other obligation should ever be assumed by you on our behalf or on behalf of a product manufacturer, licensor or supplier without our express prior written consent.

**3. Price and Terms of Payment (note: we cannot confirm prices prior to acceptance of your order).**

- 3.1 Prices payable for products or services are those in effect at the time of dispatch or delivery, unless otherwise expressly agreed. Prices may be indicated on the site or an order acknowledgement but the authoritative price in the event of any discrepancy, is the price that is notified to you on our acceptance.
- 3.2 We have the right at any time prior to our acceptance to withdraw any discount and/or to revise prices to take into account increases in costs including (without limitation) costs of any materials, carriage, labor or the increase or imposition of any tax, duty or other levy and any variation in exchange rates. We also reserve the right to notify you of any mistakes in product descriptions or errors in pricing prior to product dispatch. In such event if you choose to continue with fulfillment of the order, you acknowledge that the product or service will be provided in accordance with such revised description or corrected price.
- 3.3 The places that we deliver to are listed on the site ("**territory**") and all downloading, use and transfer of the Tech Soft 3D software products is subject to Section 9.2. Unless otherwise specified, prices quoted are: (a) exclusive of the costs of shipping or carriage to the agreed place of delivery within the territory (charges for which are stated on the site); and (b) exclusive of vat and any other tax or duty which (where applicable) must be added to the price payable. You agree to pay for taxes, shipping or carriage of products as such costs are specified by us on the site when you submit your purchase order.
- 3.4 Payment shall be made prior to delivery and by such methods as are indicated on the site (and not by any other means unless we have given our express prior agreement).
- 3.5 Except as expressly provided elsewhere in these terms or the site, payment may be taken in full notwithstanding any claim for short delivery or defects.
- 3.6 We will charge credit or debit cards on dispatch of the product or commencement of services. We reserve the right to verify credit or debit card payments prior to acceptance.
- 3.7 Where the payment is invoiced, each invoice shall be due on and made in full on or prior to the due date listed on the relevant invoice.
- 3.8 No counterclaim or set-off may be deducted from any payment due without our written consent. We may also take action against you for the price of products at any time after payment has become due even though title in those products may not have passed to you.
- 3.9 Any extension of credit allowed to you may be changed or withdrawn at any time. Interest shall be chargeable on overdue amounts accruing on a daily basis at the maximum amount permitted under applicable law from the due date for payment until our receipt of the full amount (whether before or after judgment). You shall indemnify us on demand against any out of pocket expenses incurred in relation to recovery of any overdue amounts.

#### **4. Termination.**

If you commit an act of bankruptcy or enter into a deed of arrangement with creditors or a court order for winding-up is made against you or you take or suffer any similar action in consequence of debt or we have cause to believe that you are unable to pay your debts as they fall due; or you fail to pay any amount by the due date or breach any of these terms then, without prejudice to any of our other rights, we may:

- (a) stop any products in transit; and/or
- (b) suspend further product deliveries; and/or
- (c) stop or suspend provision of services; and/or
- (d) by written notice to you terminate your order and all or any other contracts between us and you.

#### **5. Software.**

5.1 Where any product supplied is or includes software ("**software**"), this software is licensed by us or by the relevant licensor/owner subject to the relevant end-user license agreement or other license terms included with software ("**license terms**") and/or the product. In addition:

- (a) such software may not be copied, adapted, translated, varied, modified, disassembled, decompiled, reverse engineered or combined with any other software, save to the extent that (i) this is permitted in the license terms, or (ii) applicable law expressly mandates such a right which cannot legally be excluded by contract.
- (b) save to the extent provided for in any applicable license terms, your rights of return and/or to a refund under these conditions and any applicable return policy do not apply in the event that you open the software shrink-wrap and/or break the license seal and/or use the software.
- (c) EXCEPT TO THE EXTENT EXPRESSLY PROVIDED BY US IN WRITING OR UNDER RELEVANT LICENSE TERMS, SOFTWARE IS PROVIDED AS-IS AND WITH ALL FAULTS AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY MATTER, INCLUDING BUT NOT LIMITED TO PERFORMANCE, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME STATES. THE PROVISIONS OF SECTION 6.1.3 AND SECTION 7 WILL SURVIVE THE TERMINATION OF THIS AGREEMENT, HOWSOEVER CAUSED, BUT THIS WILL NOT IMPLY OR CREATE ANY CONTINUED RIGHT TO USE THE SOFTWARE AFTER TERMINATION OF THIS AGREEMENT. THESE TERMS STATE OUR ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDIES.

#### **6. Liability Limitation.**

EXCEPT AS OTHERWISE SET FORTH IN OUR END USER LICENSE OR OTHER LICENSE AGREEMENT WITH YOU, TO THE MAXIMUM EXTENT LEGALLY PERMITTED, WHETHER OR NOT WE WERE AWARE OR ADVISED OF THE POSSIBILITY OF DAMAGES, AND WHETHER

OR NOT THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE: (1) OUR AGGREGATE LIABILITY (WHETHER FOR BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL THEORY) SHALL IN NO CIRCUMSTANCES EXCEED THE COST OF THE PRODUCTS YOU ORDERED AND THAT ARE MOST CLOSELY RELATED TO YOUR DAMAGES AND (2) WE SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, LOST REVENUE, OR COST OF COVER.

## **7. Third Party Rights.**

- 7.1 You shall indemnify us against any and all liabilities, claims and costs incurred by or made against us as a direct or indirect result of us performing services or carrying out any work on or to the products where this has been done to your (or your representative's) specific requirements or specifications causing an infringement or alleged infringement of any proprietary rights of any third party.
- 7.2 To the fullest extent permitted by law and save where expressly set out in any license terms or elsewhere, we shall have no liability to you in the event of the products or services infringing or being alleged to infringe the proprietary rights of any third party. In the event that the products are or may be the subject of patent, copyright, database right, registered design, trademark or other rights of any third party, you should refer to the relevant terms of the product manufacturer and/or licensor/owner. We shall be obliged to transfer to you only such license rights as we have.

## **8. Consents, Customs Duties & Export.**

- 8.1 If any license or consent of any government or other authority is required for the acquisition, transfer or use of the products by you, you shall obtain such license or consent at your own expense and if necessary produce evidence to us on demand. Failure so to do shall not entitle you to withhold or delay payment of the price. Any additional expenses or charges incurred by us resulting from such failure shall be paid by you.
- 8.2 Products licensed or sold to you under these terms may be subject to export control laws and regulations in the territory or other relevant jurisdiction where you take delivery or use them. You shall be responsible for complying with those laws and will not do anything to violate them. All rights to use the product are granted on condition that such rights are forfeited if you fail to comply with the terms of this agreement.
- 8.3 Items entering the European economic area (EEA) from outside over a certain value may be subject to customs charges (e.g. where costs are in excess of your personal import allowance). You may be subject to customs charges, import duties and taxes, levied when the product reaches your specified destination. Any such additional charges for customs clearance or import duties or taxes must be paid by you. You should contact the local customs office in the relevant jurisdiction for further information on customs policies or duties.

## **9. Notices.**

- 9.1 Any notice or other communications in relation to our transactions may be given by sending the same by hand delivery or pre-paid post to the latest address and contact that one party has notified in writing to the other. This will also be the address for service of legal proceedings in the manner prescribed by law. Except as set out above in relation to cancellation of consumer orders, such notices or communications (where properly addressed) shall be considered received:

(a) In relation to hand delivery, on the date of delivery at the relevant address (or, if this is not a working date, the first working date thereafter); or

(b) If posted, 5 working days after the date of posting.

## **10.General.**

10.1 You shall not assign or transfer, or purport to assign or transfer your rights under these terms without our prior written consent.

10.2 We shall not be liable to you nor held in breach of contract for any loss or damage which may be suffered as a direct or indirect result of us being prevented, hindered or delayed in the performance by reason of any circumstances beyond our reasonable control including (but not limited to) any act of god, war, riot, civil commotion, government action, explosion, fire, flood, storm, accident, strike, lock-out, trade dispute or labor disturbance, breakdown of plant or machinery, interruption in the supply of power or materials and in such event we may elect to cancel your order and refund any payments made.

10.3 You acknowledge that these terms supersede and cancel all previous contracts, agreements and working arrangements whether oral or written, express or implied, between us related to the subject matter hereof, excluding the End User License Agreement for the applicable product and the Maintenance Services Terms, if applicable. These terms prevail over any other terms or conditions contained in or referred to elsewhere or implied by trade, custom or course of dealing. Any purported terms or conditions to the contrary are hereby excluded to the fullest extent legally permitted. To the fullest extent permitted under applicable law, we reserve the right to modify these terms upon prior written notice to you with effect for the future - subject to your right to reject, by way of written notice, our modifications to these terms with respect to any orders for which acceptance, but not yet fulfillment, has occurred.

10.4 No relaxation, forbearance, delay or indulgence by either you or us in enforcing any of these terms or the granting of time by either party to the other shall prejudice or restrict such rights and powers.

10.5 No waiver of any term or condition of these terms shall be effective unless made in writing and signed by us. The waiver of any breach of any term shall not be construed as a waiver of any subsequent breach or condition.

10.6 If for any reason we determine or a court of competent jurisdiction finds that any provision or portion of these terms to be illegal, unenforceable, or invalid under applicable law in a particular jurisdiction:

(a) These terms will not be affected in other jurisdictions to the extent that such determination or finding has no application; and

(b) In the relevant jurisdiction, the remainder of these terms (to the fullest extent permitted by law) will continue in full force and effect.

## **11.Governing law**

11.1 The construction validity and performance of these terms shall be governed by the laws of the State of Oregon, without giving effect to conflict of laws provisions thereof, and the parties submit to the exclusive jurisdiction of the state and federal courts of Oregon in the event of legal proceedings arising from any dispute; and

11.2 The language of any dispute resolution procedure or any proceedings will be English.