

Fox Development, Inc. Terms of Sale

Introduction

This document describes the terms and conditions under which all Fox Development, Inc. products are sold to our customers. All customers, upon beginning their relationship with Fox Development are provided with a copy of this document for their records. This document explains all policies and practices with regard to payment for products, warranties and disclaimers of liability. This document also covers services provided by Fox Development, including consulting and hosting services.

I. The Product

This document includes any and all products produces, designed, coded or sold by Fox Development, Inc. to the customer. When used in this document, the words “software” and “custom software” refer to any web application, web page, desktop application, palm device application or server application created by Fox Development for the customer.

II. Terms for sale of software created by Fox Development:

Software products are defined as any digital media transmitted to the customer electronically or provided on some form of hard media such as a DVD or CD-ROM. In the case of electronic media the customer takes possession of the media when it is downloaded from Fox Development’s servers or when a Fox Development technician installs a software product on the customer’s computer equipment at the customer’s request.

- 1. Payment:** The customer agrees to pay the purchase price as established in the estimate or proposal provided to the customer by Fox Development. Payment must be received by the due date printed on the invoice. Invoices will be provided in e-mail format to the e-mail address provided by the customer to Fox Development. The invoice may also be provided in printed form. Late fees will be assessed on any payment made more than five (5) days after the due date printed on the invoice. Late fees will be assessed at a rate of 10% of the invoice total (less tax if any and shipping charges if any exist) for every five (5) days the payment is late.
- 2. Form of Payment:** The customer may make payment by cash, check or credit card.
- 3. Returned Checks:** Fox Development, Inc. will charge the customer a fee of \$45.00 for any check returned by the bank for insufficient funds.
- 4. All Sales Are Final:** Fox Development does not provide any refunds or exchanges for any software product. The customer may be entitled to warranty service under the terms described below in item 5.
- 5. License:** The software is offered to the customer under the terms of the Software License in this document in section IV.
- 6. Limited Warranty:** Fox Development, Inc. warrants to the customer that any software product designed or developed by Fox Development, will contain all items described in the proposal to the customer and that those items will function in the way described in the proposal to the

customer. Fox Development is not responsible for any malfunction or performance issue that results from improper use of the software or as the result of a change in the customer's computing environment (operating system upgrade, update, new software installation, anti-virus or other element that could affect the proper operation of the software product). Fox Development will provide service free of charge to remedy any valid warranty claim that a customer submits to Fox Development in writing within thirty (30) days of the sale of the product. This warranty is modified when applied to the following circumstances:

- a. Bug Fixes:** Fox Development will voluntarily repair any software bug discovered by a customer within 1 year of the time of sale. A bug is any error in the software code that prohibits the software from functioning as described in the proposal to the customer. Bugs that arise as a result in changes in the customer's computing environment **may** be serviced at Fox Development's sole discretion and may be subject to billing at the then current hourly rate for programming services.
- 7. Disclaimer:** THE FOREGOING LIMITED WARRANTY STATES THE SOLE AND EXCLUSIVE REMEDIES FOR FOX DEVELOPMENT'S BREACH OF WARRANTY. FOX DEVELOPMENT, INC. WILL NOT AND CANNOT WARRANT THE RESULTS YOU MAY OBTAIN BY USING ITS PRODUCTS. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, FOX DEVELOPMENT MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT WILL FOX DEVELOPMENT BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF FOX DEVELOPMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The provisions of all sections in this document shall remain in effect for as long as the customer continues to use the products purchased from or developed by Fox Development.
- 8. Indemnification:** The customer will indemnify Fox Development, Inc. , and hold Fox Development, Inc. harmless from and against all claims, demands, liabilities and expenses, including (without limitation) claims of infringement of patent, trade mark, copyright or other proprietary right, invasion of privacy, or any other matter, arising from the use of any picture, advertising copy, specifications or material furnished to Fox Development, Inc. by the customer or prepared by Fox Development, Inc. at the customer's request including reasonable attorney's fees with court costs.

III. Terms for sale of Consulting Services

Consulting services are any IT related service provided by Fox Development, Inc. to the customer that constitute: advice (written or verbal), technical assistance(written or verbal), documentation, computer network installation, computer network repair, computer network engineering, computer network design or software design.

- 9. Payment:** The customer agrees to pay the invoice price for any and all consulting services provided by Fox Development, Inc. to the customer. Payment for all services is due by the date printed on the invoice. Payment must be received by the due date printed on the invoice. Invoices will be provided in e-mail format to the e-mail address provided by the customer to Fox Development. The invoice may also be provided in printed form. Late fees will be assessed on any payment made more than five (5) days after the due date printed on the invoice. Late fees will be assessed at a rate of 10% of the invoice total (less tax if any and shipping charges if any exist) for every five (5) days the payment is late.
- a. For hourly services:** Fox Development, Inc. provides some consulting services at a hourly rate. The customer will be provided with an estimate for the work to be performed. The final total for hourly services may vary from the estimate price by no more than 20%. If for any reason, services cannot be provided within the estimated time plus the 20% allowance for reasons beyond Fox Development, Inc's control, the customer will be informed of the situation and asked if they wish for the work to continue. If the customer decides not to continue the work, the customer agrees to pay the invoice total for the hours consumed up to that point. If the customer decides to continue with work, the customer agrees to pay the full invoice total.
 - b. For monthly services:** Fox Development, Inc. provides some consulting services at a monthly rate. The customer will be provided with a monthly rate for service before service commences, this rate will be provided in a written form. Payment for monthly services is always due on the 1st and 15th of each calendar month. Each payment shall be for 1 half (50%) of the monthly invoice total. If any additional fees or charges are incurred by the customer (these items may include service items that fall outside of the proposal provided to the customer) these items will be added to the monthly invoice total.
- 2. Regular Expenses:** The customer is responsible for all expenses directly related to providing the customer with consulting services. The customer will be informed before any action is taken that could result in an expense that will be charged to the customer with the exception of the gasoline surcharge described in 2b below, this fee is considered a standard item and does not require the customer's permission in advance. If the service refuses permission for any expense item, Fox Development cannot be held responsible for providing the service under the terms described in the proposal. Expenses will be added to the invoice total. Reimbursement for these expenses is due when the invoice is due. Fox Development will provide any receipts for any expense related item. These expenses shall include:
- a. Printing fees:** If delivery of the service requires that Fox Development, Inc. print large volumes of material, bound material, color documents or any other print services that require the services of a professional printer these charges will be passed on to the customer in full.
 - b. Transportation fees:** These fees include any airfare, subway, train, bus, taxi or other transportation fares required to provide the customer with service. The customer will be charged a gasoline surcharge of \$0.12 per mile any time Fox Development must utilize its own or its employee's vehicles to provide service for the customer.

- c. **Lodging and meals:** For any trip that is more than 100 miles from Fox Development's headquarters, the customer will be responsible for meal and lodging fees of up to \$180.00 per day.
3. **Equipment Expenses:** If Fox Development, Inc. is asked to provide any service that requires the purchase of any equipment the customer will be notified of the price for that equipment. Fox Development, Inc. does not sell any equipment but shall acquire said equipment from a retailer of its choosing. Equipment must be paid for in advance of its purchase.
 4. **Programming:** If Fox Development is asked to provide custom software development, website development or any other services that results in the creation of software products for the customer purchasing consulting services said software will be subject to the software license found below in section IV of this document.
 5. **Form of Payment:** The customer may make payment by cash, check or credit card.
 6. **Returned Checks:** Fox Development, Inc. will charge the customer a fee of \$45.00 for any check returned by the bank for insufficient funds.
 7. **Third Party Products:** Fox Development may recommend hardware or software products produced or manufactured by third parties. Fox Development is not responsible in any way shape or form for the quality, fitness or use of these products. Fox Development does not resell these products nor serve as an agent or representative of any third party firm. Fox Development does not offer any warranty of any kind for any third party product or service.
 8. **Limited Warranty:** Fox Development, Inc. warrants that it will provide to the best of its ability, the consulting services requested by the customer and agreed to by Fox Development. Fox Development cannot guarantee nor warranty that use of its consulting services will deliver any particular result to the customer or that the customer will derive any particular value from those services. If the development of software results from the use of Fox Development's consulting services the limited warranty for software as defined in section II item 5 will apply to that software.
 9. **Disclaimer:** THE FOREGOING LIMITED WARRANTY STATES THE SOLE AND EXCLUSIVE REMEDIES FOR FOX DEVELOPMENT'S BREACH OF WARRANTY. FOX DEVELOPMENT, INC. WILL NOT AND CANNOT WARRANT THE RESULTS YOU MAY OBTAIN BY USING ITS SERVICES. EXCEPT FOR THE FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, FOX DEVELOPMENT MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT WILL FOX DEVELOPMENT BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF FOX DEVELOPMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The provisions of all sections in this document shall remain in effect for as long as the customer continues to use the products purchased from or developed by Fox Development.

- 10. Indemnification:** The customer will indemnify Fox Development, Inc. , and hold Fox Development, Inc. harmless from and against all claims, demands, liabilities and expenses, including (without limitation) claims of infringement of patent, trade mark, copyright or other proprietary right, invasion of privacy, or any other matter, arising from the use of any picture, advertising copy, specifications or material furnished to Fox Development, Inc. by the customer or prepared by Fox Development, Inc. at the customer's request including reasonable attorney's fees with court costs.

IV. Software License

This license applies to any and all software produced by Fox Development, Inc.

- 1. License:** Any customer who purchases software from Fox Development that is created by Fox Development does so under the terms and conditions stated here:
- a. The customer may not sell the software to any third party unless the software is included with the sale of the customer's business.
 - b. The customer is free to use the software on any number of computers within its business for any length of time.
 - c. The customer may not reverse engineer or utilize any de-compilation techniques in order to obtain the source code of any compiled software product.
 - d. Fox Development, Inc. retains the copyright to any and all software produced by Fox Development for a customer.
 - e. If a customer wishes to contract Fox Development to produce software that it intends to rent, sell or lease the customer must inform Fox Development, Inc. of these intentions before any work begins.
 - f. The customer may not reproduce the software or make any copies of the software for use outside of the customer's business. The customer may produce as many copies of the software as it wishes for use INSIDE its business.
 - g. The customer may not give the software to any third party.
 - h. The customer may not make the software available for public download at any time, for any reason.
 - i. The customer cannot allow the source code for the software to be given, sold, rented, leased or lent to any party who is not directly employed by the customer for any reason. If the customer wishes to provide the software to a third party software development firm for integration with some other software they must request permission in writing from Fox Development, Inc. Fox Development, Inc. reserves the right to refuse permission if it has reason to believe that the third party may utilize any of the source code for its own purposes or for inclusion in one of its products.
 - j. If the customer at any time is unsure of whether or not their use of the software or intended use for the software is or will be in violation of these terms the customer should contact Fox Development, Inc. with any questions that they may have before they engage in any action.

- k. If the software is stolen from the customer or otherwise transmitted to a third party without the customer's permission the customer must inform Fox Development immediately and cooperate with Fox Development in ascertaining the location of the software.
2. **Remedies:** If the customer should violate any provision of the license terms stipulated above in section IV section 1, Fox Development may make any use of any means available to it by the laws of the state of Florida or the Federal Laws of the United States of America for the recovery of any damages it may suffer as a result of the customer's violation. In addition to any legal action that may occur as a result of the violation of the license the customer agrees to the following:
 - a. The customer must take immediate action to stop any activity that is in violation of the license.
 - b. The customer may be asked to surrender any and all copies of the software to Fox Development at once. If asked to do so the customer agrees to do so immediately.
 - c. The customer must take any action within the limits of the law to recover any copies of the software that were sold, given or allowed to pass to any third party. The customer agrees to make the names and location of these parties available to Fox Development and its legal representatives.

V. Hosting Services

The following terms and conditions apply to the sale of any hosting service provided to the customer by Fox Development, Inc

1. **Payment:** The customer agrees to pay all monthly hosting fees due each month by no later than the 5th of each calendar month. The amount due is determined by the hosting package selected by the customer and noted on the service agreement provided to the customer. Late fees will be assessed beginning on the 10th of each month and will be in the amount of \$10.00 for each five days that the payment is late.
2. **Forms of Payment:** Payment for hosting services may be made in the form of cash, check, credit card or Paypal payment.
3. **Termination of Service Due to Non-Payment:** Fox Development may terminate the customer's hosting services at any time without prior notice when a payment has not been received by the 10th of any calendar month. Fox Development will restore service as quickly as possible as soon as payment in full plus any late fees has been provided by the customer and received by Fox Development.
4. **Quality of Service:** Fox Development will provide the customer with the best possible service quality with regards to availability of on-line services. Fox Development cannot however guarantee that the service will be available at any particular time due to the nature of the Internet and computer networks in general. Fox Development will not be responsible nor make any refunds for any loss of service that results from circumstances beyond its control.
5. **Acceptable Content:** Fox Development supports the customer's rights to freedom of speech and will not limit any content that the customer wishes to place on their hosted website with

the exception of material made illegal by any federal, state or local law. Any material found to be in violation of the law must be removed immediately. Fox Development is obligated to cooperate with law enforcement officials should any content on any website hosted on its equipment be found to be illegal.

6. **Illegal Activities:** The customer may not post any content or operate any web application or program through Fox Development's servers that is used in connection with any illegal activities such as data theft, identify theft or any form of scam. If the customer is found to be conducting any illegal activities through the website or if the website is connected in any way with any illegal activities hosting services will be terminated immediately and no refunds will be made. Fox Development is obligated to report any illegal activities to law enforcement officials and will do so.
7. **Access to Data:** Fox Development will provide access to any data on the customer's website or stored within a database hosted on Fox Development's equipment to any customer who is not delinquent or has not had their service terminated. Fox Development will not provide access to data stored on its equipment to customers who owe a balance on their account.
8. **Data Backup:** Fox Development performs regular back-ups of its servers on a nightly basis. These back ups are for use by Fox Development in the event that a server should fail they are not designed to provide the customer with a reliable means to store important data. Should the customer require access to data stored in a back up file, Fox Development will make the data available to the customer for a recovery fee of \$125.00. Fox Development cannot retrieve data that is older than 3 days. Email IS NOT available on these back-ups, email is removed from our servers by the customer's email client each time they check their mail.
9. **Data Loss:** Fox Development will not be responsible for any data loss that the customer may experience through the use of Fox Development's hosting services.
10. **Regular Maintenance:** Fox Development's servers will be unavailable to the customer each day from 3:00 AM until 3:30 AM for regularly scheduled maintenance and data back-up.
11. **Limited Warranty:** Fox Development, Inc. warrants to the customer that their hosting services will be available at all times except during regularly scheduled maintenance periods and during service outages that are beyond Fox Development's control. Fox Development is not responsible for any malfunction or performance issue that results from improper use of its hosting services or as the result of a change in the customer's computing environment (operating system upgrade, update, new software installation, anti-virus or other element that could affect the proper operation of the software product). Fox Development will provide credit toward future hosting fees for any service outage that is the result of negligence on the part of Fox Development, Inc. The customer will receive a credit for 1 day's service for each hour that their service is unavailable. If the customer's hosting services are going to be unavailable for an extended period of time (more than 24 hours) due to negligence on the part of Fox Development, Fox Development will provide the customer with one free month of hosting services.
12. **Disclaimer:** THE FOREGOING LIMITED WARRANTY STATES THE SOLE AND EXCLUSIVE REMEDIES FOR FOX DEVELOPMENT'S BREACH OF WARRANTY. FOX DEVELOPMENT, INC. WILL NOT AND CANNOT WARRANT THE RESULTS YOU MAY OBTAIN BY USING ITS SERVICES. EXCEPT FOR THE

FOREGOING LIMITED WARRANTY, AND FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY LAW APPLICABLE TO YOU IN YOUR JURISDICTION, FOX DEVELOPMENT MAKES NO WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT WILL FOX DEVELOPMENT BE LIABLE FOR ANY LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCTS, EVEN IF FOX DEVELOPMENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The provisions of all sections in this document shall remain in effect for as long as the customer continues to use the services purchased from or developed by Fox Development.

- 13. Indemnification:** The customer will indemnify Fox Development, Inc. , and hold Fox Development, Inc. harmless from and against all claims, demands, liabilities and expenses, including (without limitation) claims of infringement of patent, trade mark, copyright or other proprietary right, invasion of privacy, or any other matter, arising from the use of any picture, advertising copy, specifications or material furnished to Fox Development, Inc. by the customer or prepared by Fox Development, Inc. at the customer's request including reasonable attorney's fees with court costs.

VI. Governing Law

This Agreement and any legal action that may result from it, is to be governed by the laws of the State of Florida and Hillsborough County.

VII. Changes or Modifications

This Agreement may be modified by Fox Development at any time without prior notice to the customer. However, any change that would substantially affect the software license or payment policies or limited warranties presented in this document will be brought to the customer's attention via email. This document is made publicly available on the Internet at all times at the following address:

<http://www.foxdevel.com/termsOfSale.pdf>