

Produce Jet LLC - Terms and Conditions

1. Terms and Conditions. Except as modified by an unexpired written agreement signed by an authorized officer of Produce Jet, the following terms and conditions comprise the complete Agreement between Customer and Produce Jet LLC (Produce Jet) with respect to products and services offered by Produce Jet. These terms and conditions specifically incorporate by reference any and all Proposals executed by Produce Jet ("Proposal(s)") and any and all executed addenda for software and/or services as listed in Section 7(a) through (d) of this Agreement (each a "Produce Jet Addendum" and with this Agreement, collectively, the "Produce Jet Agreements"). Acceptance of all orders by Produce Jet is strictly limited to, and Produce Jet specifically objects to any terms or conditions whatsoever provided by Customer that differ from or add to, these terms and conditions.

2. Acceptance of Orders. Produce Jet reserves the right to review and decline any order.

3. Price; Delivery. The price for each product and service shall be that specified in an unexpired Produce Jet Proposal in effect when an order is accepted by Produce Jet. All prices are exclusive of all taxes and similar amounts, and, when applicable, such items may be listed separately on invoices. If Customer claims an exemption from any such items, Customer must provide a certificate of exemption at the time of order. All shipments will be F.O.B. factory, provided that only risk of loss, not title, for software products shall pass to Customer on shipment. Shipments may be made prepaid and add unless other arrangements have been made by Customer prior to shipment. Customer shall be responsible for all freight, handling, and insurance charges, along with any and all taxes and similar amounts imposed or levied by any jurisdiction with respect to the sale or provision of products and services (other than income taxes based on Produce Jet's income from such sale or provision).

4. Terms of Payment. Produce Jet will issue a separate invoice for each shipment. Subject to credit approval, payment terms are specified in the Produce Jet Proposal provided to Customer. All prices shall be stated and paid in United States dollars, unless otherwise specified in the applicable Proposal. Produce Jet reserves the right to require payment in advance or to establish other credit terms for Customer. All hardware and software products shall be deemed received by Customer on the date received by Produce Jet for integration and testing services. Service fees shall be specified in a Produce Jet Proposal and will be invoiced and prepaid on an annual basis unless otherwise specified to Customer. Each shipment and/or invoice shall be deemed a separate and independent transaction. Payments due under this Agreement are not subject to any set-off claims of Customer.

5. Security Interest. This Agreement shall constitute a security agreement in which Customer grants Produce Jet a purchase money security interest in each product shipped to Customer until all payments in full are made by Customer to Produce Jet. Customer agrees, without further compensation, at any time to execute an appropriate financing statement and other documents necessary to perfect the security interest granted hereby and consents to the filing of such financing statement and related documents with the appropriate authorities.

Customer appoints Produce Jet as its attorney-in-fact for the purpose of executing and filing with the appropriate authorities a financing statement and all other documents necessary to perfect the security interest granted hereby. Customer may cancel or delay delivery of any order for products regularly stocked by Produce Jet without penalty by giving Produce Jet written notice of such cancellation or delay not less than 30 calendar days prior to Produce Jet's scheduled shipping date. If Customer cancels or delays delivery of any order less than 30 calendar days prior to Produce Jet's scheduled shipping date, Customer shall pay Produce Jet a cancellation/rescheduling fee in an amount equal to 15% of the price for the products canceled or delayed plus any third party charges incurred by Produce Jet. Customer may not cancel or delay delivery of any order for products that are not regularly stocked by Produce Jet.

6. Other Payment Terms. Late payments will accrue interest at the lesser of 1.5% per month or the maximum rate permitted by applicable law. All payments shall be made in U.S. dollars and will be deemed made when received. If Customer fails to pay any amount properly due and owing, Customer shall reimburse Produce Jet for all fees, costs and expenses

(including but not limited to attorneys' fees and court costs) incurred by Produce Jet to collect such amounts and Produce Jet shall not be obligated to continue performance on any portion of any software product, software maintenance, or engineering and consulting services between Customer and Produce Jet.

7. Additional Produce Jet Agreements.

Software License. If the Proposal provided by Produce Jet includes a license for software developed by Produce Jet, this Agreement includes and incorporates the Produce Jet Software License Agreement, a copy of which will be delivered with the Software and is available on Produce Jet's website. All software products offered by Produce Jet and the related written user documentation are protected by United States copyright law, international treaty provisions and other intellectual property laws. Produce Jet reserves the right to amend the Produce Jet Software License Agreement from time to time, which amendments shall be incorporated into the agreement and deemed accepted by Customer upon publication. The current effective agreement can be viewed at <http://www.producejet.com/legal/ProJetSoftwareLicense.pdf>.

Software Support and Maintenance. If the Proposal provided by Produce Jet includes Software Support and Maintenance for software developed by Produce Jet, this Agreement includes and incorporates the Produce Jet Software Support and Maintenance Addendum, a copy of which will be provided upon request. Produce Jet reserves the right to amend the Produce Jet Software Support and Maintenance Addendum from time to time, which amendments will be incorporated into the agreement and deemed accepted by Customer. The current effective addendum can be viewed at <http://www.producejet.com/legal/ProJetSoftwareSupport.pdf>.

Professional Services. If the Proposal provided by Produce Jet includes Professional Services for software developed by Produce Jet, this Agreement includes and incorporates the Produce Jet Professional Services Addendum, a copy of which will be provided upon request. Produce Jet reserves the right to amend the Produce Jet Professional Services Addendum from time to time, which amendments will be incorporated into the agreement and deemed accepted by Customer. The current effective agreement can be viewed at <http://www.producejet.com/legal/ProJetProfSvc.pdf>.

8. Warranty.

Software. Produce Jet warrants that the Company Software will perform substantially in accordance with the applicable written user documentation for a period of thirty (30) calendar days from installation or the date of shipment to Customer. PRODUCE JET DOES NOT WARRANT ANY PRODUCT ORIGINALLY MANUFACTURED BY A THIRD PERSON AND IDENTIFIED AS SUCH TO CUSTOMER. In those cases where Produce Jet modifies a product originally manufactured by a third person, and identified as such to Customer, Produce Jet warrants that the modification to the product shall (i) be free from defects in materials and workmanship, and (ii) meet the specifications contained in the applicable product specifications prior to shipment for a period of thirty (30) calendar days from date of shipment to Customer. Certain products are warranted by the third party original manufacturer. Other than as expressly set forth above, the Company Software is provided "AS IS" and without warranty of any kind and Company and Company's licensor(s) EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

Services. Produce Jet's sole obligation to provide Services, as defined under this Agreement and any Produce Jet Agreement or attachment, shall be "AS IS." PRODUCE JET MAKES NO, AND EXPRESSLY DISCLAIMS ANY, WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR FOR ERROR-FREE SERVICE, UNINTERRUPTED SERVICE OR AGAINST INFRINGEMENT. Without limiting the foregoing, Produce Jet does not represent or warrant that every reported problem or error with the Software or Services (as defined in this Agreement or the applicable Produce Jet Agreement) can or will be resolved to the satisfaction of Customer.

No Other Warranty. THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH ABOVE ARE IN LIEU OF, AND PRODUCE JET DISCLAIMS ANY AND ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS (EITHER EXPRESS OR IMPLIED), INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PURPOSE, WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. PRODUCE JET EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION TO ANY PERSON OTHER THAN CUSTOMER. NO WRITTEN OR ORAL INFORMATION OR ADVICE GIVEN BY PRODUCE JET, ITS DEALERS, DISTRIBUTORS, AGENTS, OR EMPLOYEES SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE LIMITED WARRANTY SET FORTH ABOVE AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE.

9. Remedies. Customer's sole and exclusive remedy for a product that is shown to be defective within the applicable warranty period and returned to Produce Jet, shall be, in contract, misrepresentation, tort, negligence or strict liability or otherwise, at Produce Jet's sole option, either (i) the correction, repair, or replacement of, or (ii) the return of the fee, price, or other consideration paid for, said defective product. Customer's sole and exclusive remedy for any damages resulting from Produce Jet's performance or non-performance of the Services is (x) with respect to Equipment, the adjustment and repair of the Equipment or replacement of its parts, or at Produce Jet's option, replacement of the Equipment, and (y) with respect to Software, the re-performance of Services with respect to Software or at Produce Jet's option, replacement of the Software. If, after repeated efforts, Produce Jet is unable to restore the Equipment to working order, Customer shall be entitled to recover actual damages to the limits set forth in this Agreement. Similarly, if, after repeated efforts, Produce Jet is unable to properly perform the agreed Services with respect to Software, Customer shall be entitled to recover proven actual damages to the limits set forth in this Agreement.

10. Limitation of Liability.

Loss of Use or Data. Produce Jet will not be liable for loss of use of any of the items of Software or Equipment to be serviced under any Produce Jet Agreement, or for any loss or damage occasioned by such loss of use, or by any failure of any of the Software or Equipment to perform properly. Services provided under this Agreement or any Produce Jet Agreement does not assure uninterrupted operation of the Software or Equipment. In no event shall Produce Jet be responsible for any loss of data or information in connection with the Services, Equipment or Software.

Liability Limits. Produce Jet's liability for damages to Customer or to any third party for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the lesser of (i) fifty percent (50%) of the Service fees Customer actually paid Produce Jet over the twelve (12) months preceding the accrual of the subject damages or (ii) that portion of the amounts paid under this Agreement that is directly attributable to the particular unit of Equipment or Software directly involved in the liability claim.

Limitation on Damages. IN NO EVENT SHALL PRODUCE JET BE LIABLE TO CUSTOMER FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR ANY OF THE PRODUCTS AND SERVICES PROVIDED BY PRODUCE JET, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE AND FURTHER INCLUDING INJURY TO PROPERTY, REGARDLESS OF WHETHER PRODUCE JET WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

Aggregate Liability. IN NO EVENT SHALL PRODUCE JET'S AGGREGATE LIABILITY TO CUSTOMER WITH RESPECT TO ANY AND ALL CLAIMS AT ANY AND ALL TIMES ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY PRODUCT OR SERVICES PROVIDED BY PRODUCE JET HEREUNDER, WHETHER BASED IN CONTRACT, MISREPRESENTATION, TORT, NEGLIGENCE OR STRICT LIABILITY, OR OTHERWISE, EXCEED THE LESSER OF \$250,000 OR THE PURCHASE PRICE PAID TO PRODUCE JET BY CUSTOMER FOR THE PRODUCTS AND SERVICES THAT ARE THE SUBJECT OF SUCH CLAIMS.

Essential Basis of the Bargain. The parties acknowledge that Produce Jet has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain

between the parties. The parties agree that the limitation and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found to have failed of their essential purpose.

11. Returns. A product that is not rejected by written notification to Produce Jet within ten (10) calendar days of receipt shall be deemed to have been accepted by Customer on the date of delivery. All returns must be made with the product in the same condition as shipped by Produce Jet and with all of its original packaging, including documentation. All returns are subject to a re-stocking fee equal to 35% of the sales price of the returned item, except that the restocking fee may equal up to 50% of the sales price if the returned item is not in its original condition or packaging. Customer shall obtain a Return Materials Authorization Number (RMA) prior to returning any rejected product to Produce Jet. Customer shall ship rejected products freight prepaid to Produce Jet within seven (7) calendar days after receiving an RMA number, and shall clearly mark the RMA number on the inside and outside of the shipping container and on all written materials sent to Produce Jet. FAILURE TO SHIP A REJECTED PRODUCT TO PRODUCE JET WITHIN SEVEN (7) CALENDAR DAYS AFTER AN RMA NUMBER IS ISSUED SHALL BE DEEMED AN ACCEPTANCE OF SUCH PRODUCT FOR ALL PURPOSES.

12. Assignment. This Agreement may be assigned by either Party to any subsidiary and to any successor, assignee or transferee of Produce Jet by merger, consolidation or acquisition of a majority of its stock or all or substantially all of its assets pertaining to this Agreement. Produce Jet further reserves the right to delegate all or portions of its obligations to a third party at any time.

13. Miscellaneous.

Governing Law. The terms and conditions of this Agreement, and the parties' rights and obligations under this Agreement, shall be governed by, and interpreted in accordance with, the laws of the State of California, excluding its conflicts of laws principles. The parties irrevocably submit to the venue and jurisdiction of the state and federal courts located in Fresno County.

Entire Agreement; Amendments. This Agreement constitutes the entire Agreement between the parties concerning the subject matter hereof and supersedes all previous communications and agreements, oral or written, between the parties. No amendment or modification of this Agreement shall be effective unless it is in writing and is signed by an authorized representative of each party. If any provision of the Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, that provision will be severed from this Agreement and any remaining provisions will continue in full force.

Waivers. The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further condition or additional right that such party may hold under this Agreement. The failure of either party at any time to require the performance by the other of any of the terms or provisions of this Agreement or the waiver by one party of a breach of any provision by the other shall in no way affect the right of that party thereafter to enforce the same.

Export. Customer shall not export, directly or indirectly, any product without first obtaining the appropriate U. S. Government export license.

Force Majeure. Produce Jet shall be excused from any delays or failure in performance caused by any labor dispute, governmental requirement, act of God, inability to secure materials and transportation facilities or other causes beyond its reasonable control.

Successors. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

Limitation on Rights. No license, immunity or other right is granted pursuant to this Agreement to Customer whether directly or by implication, estoppel or otherwise, with respect to any know-how, inventions, trade secrets, patent, trademark, copyright or other intellectual property right of Produce Jet.

Notices. All notices specified in this Agreement shall be in writing and sent by certified or registered mail or by reliable overnight courier to the address of the noticed party first listed in this Agreement.