



OnX Enterprise Solutions – Standard Terms & Conditions --Canada

The following terms and conditions (the "Terms") apply where applicable to any sale, license and/or provision of Products and/or Services by OnX Enterprise Solutions Ltd. or its respective affiliates ("OnX") to Customer.

1. DEFINITIONS

- 1.1 "Customer" refers to a purchaser of Products from OnX pursuant to an Order.
- 1.2 "Equipment" refers to hardware products supplied by OnX to Customer pursuant to an Order.
- 1.3 "Order" refers to Customer's purchase order for Products submitted to and accepted by OnX.
- 1.4 "Products" refers to Equipment and/or Software and/or Services.
- 1.5 "Services" refers to any services provided by OnX to Customer.
- 1.6 "Software" refers to computer programs (including databases and authorization keys) supplied by OnX to Customer pursuant to an Order.

2. ORDERS

- 2.1 All Orders are subject to acceptance by OnX, in its sole discretion, and shall be governed by these Terms. No additional or different provisions contained in Customer's purchase order forms or other business forms or correspondence shall be of any force or effect whatsoever unless expressly approved by OnX in writing.

3. PRICES

- 3.1 Prices and charges for Products are subject to change without notice. Prices and charges exclude, and Customer is solely responsible for, all applicable sales, use and goods and services taxes.

4. RESCHEDULE AND CANCELLATION CHARGES

- 4.1 Subject to the prior written approval of OnX, Customer may cancel or reschedule an Order within thirty (30) days of its acceptance by OnX.
- 4.2 Any Order that is canceled or re-scheduled in accordance with Section 4.1 may be subject to a re-stocking fee of twenty-five percent (25%) of the value of the Order.

5. PAYMENT

- 5.1 Payment in full for Products (inclusive of applicable taxes) shall be due and payable within thirty (30) days after the date of OnX's invoice issued in respect of the Order (the "Due Date"), unless OnX otherwise expressly agrees in writing. If OnX does not receive full payment by the Due Date, OnX may, by written notice to Customer, declare the entire balance of all indebtedness owed by Customer to OnX under all Orders then outstanding to be due and payable immediately. Customer shall pay interest at the rate of 1.5% per month (18% per annum) on all overdue amounts until full payment is received by OnX.
- 5.2 In order to establish and/or maintain credit privileges, Customer shall provide OnX with all necessary financial information as may be requested by OnX from time to time. OnX has the right to refuse to grant and/or revoke credit privileges at any time. Purchases on credit are subject to a processing charge.

6. DELIVERY

- 6.1 Products will be delivered F.O.B. Customer's facility in Canada specified in the Order. OnX will be responsible for arranging transportation and insurance, unless otherwise directed by Customer in writing at the time the Order is placed.
- 6.2 Title and risk of loss to the Products passes to Customer once the Products leave either OnX's or a third party supplier's facilities and Customer shall be responsible therefore.
- 6.3 Customer must notify OnX of any shortages or shipping errors in the fulfillment of the Order within ten (10) days of receipt thereof. OnX shall have no liability for any shortages or shipping errors brought to OnX's attention beyond such period. IN NO EVENT SHALL ONX HAVE ANY LIABILITY FOR PARTIAL OR LATE DELIVERY OR FOR FAILURE TO DELIVER.

7. INSTALLATION

- 7.1 If the price for Products includes installation, OnX will install the Products at Customer's facility in Canada. Customer is responsible for preparing and maintaining a safe and suitable installation and service site in accordance with OnX's site specifications. The Customer will promptly notify OnX of any potential safety or health risks that may exist at the installation site. Installation or other services may not be performed if OnX reasonably believes conditions at the installation site represent a safety or health risk. Installation will be deemed complete upon the successful execution of OnX's diagnostic programs. OnX may subcontract installation services to qualified service suppliers without consent.

8. SERVICE MATERIALS

- 8.1 OnX materials, including service tools, used in the performance of installation, warranty or other services which are delivered with the Products or stored at Customer's installation site, remain the exclusive property of OnX. Customer will provide secure storage facilities for such materials and will not use them or make them or any resultant diagnosis or system management data available for other parties without OnX's prior written consent. Parts replaced by OnX become the exclusive property of OnX.

9. WARRANTIES

9.1 Equipment and Software

The Products will be subject to and covered by the warranties of third party manufacturers and developers of the Products, if applicable, and Customer's sole recourse for breach of such warranties shall be against the manufacturer or developer of the applicable Equipment or Software, as the case may be. Such warranties will commence upon delivery of the Products or completion of installation of the Products if performed by OnX. Unless otherwise stipulated, OnX does not provide any warranties of or with respect to the Products.

9.2 Exclusions

- (a) The above warranties do not apply to Products from which the serial numbers have been removed, or to conditions resulting from improper use, external causes, including service modifications not performed by OnX or the applicable manufacturer, and operation outside the environmental parameters specified for the Product. OnX does not warrant that the operation of any Product will be uninterrupted or error free.
- (b) THE ABOVE WARRANTIES ARE THE ONLY WARRANTIES APPLICABLE TO THE PRODUCTS AND NO OTHER WARRANTY, REPRESENTATION, PROMISE, CONDITION OR UNDERTAKING OF ANY KIND, EXPRESS, IMPLIED OR COLLATERAL, APPLIES TO ONX OR THE PRODUCTS INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. SOFTWARE LICENSING

10.1 Grant of License

- 10.2 All Software provided to Customer is subject to the use, rights and limitations contained in the third party developer's license terms accompanying the Software. The Software contains proprietary technology of third parties. No ownership in or title to the Software is transferred to Customer hereunder.

11. LIMITATION OF LIABILITY

- 11.1 ONX'S MAXIMUM LIABILITY TO CUSTOMER FOR ANY CAUSE WHATSOEVER WILL BE FOR DIRECT DAMAGES ONLY, AND WILL BE LIMITED TO THE LESSER OF \$50,000 OR THE PURCHASE PRICE PAID TO ONX FOR THE PRODUCTS THAT ARE THE SUBJECT OF CUSTOMER'S CLAIM. IN NO EVENT WILL ONX BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OF DATA, LOST PROFITS OR BUSINESS, OR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES. THESE LIMITATIONS WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER STATUTE, IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT, INCLUDING NEGLIGENCE, OR ANY OTHER FORM OF ACTION.
- 11.2 Any action against OnX must be brought within twelve (12) months after the cause of action arises. For purposes of this Section 11, "OnX" includes its directors, officers, shareholders, employees, subcontractors and suppliers.

12. EXPORT STATEMENT OF ASSURANCE

- 12.1 Products obtained under these Terms may be subject to Canadian, U.S. or other export control regulations. Customer agrees that it will comply with all such regulations whenever it exports or re-exports controlled Products or technical data obtained from OnX or any product produced directly from the controlled technical data.

13. GENERAL PROVISIONS

- 13.1 **Taxes.** Customer shall punctually pay all sales use, goods and services, and other taxes, licenses, levies and assessments which become payable at any time upon, or in respect of, the Products.
- 13.2 **Credit Balances.** In order to defray the cost of customer account administration including collection costs, any credit balance or other sum owed to customer which remains unclaimed by customer for a period of six months will become the property of OnX.
- 13.3 **Force Majeure.** OnX is not responsible for delay or failure to perform any obligation under the Order or these Terms due to causes beyond its reasonable control.
- 13.4 **Assignment.** Customer will not assign or transfer any of its rights or obligations under the Order and these Terms without the prior written consent of OnX, which consent shall not be unreasonably withheld.
- 13.5 **Amendment.** These Terms may be amended from time to time by OnX. The latest Terms may be reviewed at www.onx.com.
- 13.6 **Severability.** Any provision contained herein which is or is deemed to be void, prohibited or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom and ineffective to the extent of such avoidance, prohibition or unenforceability, without invalidating the remaining provisions hereof.
- 13.7 **Language.** This document and all related documents have been written in the English language at the express request of the parties. Le présent document ainsi que et tous documents rattachant ont été rédigés en langue anglaise à la demande expresse des parties.
- 13.8 **Governing Law.** The Order and these Terms shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.