

JDCommerce Inc. Terms of Service

This Agreement ("Agreement") is by and between JDCommerce Inc. ("JDCommerce") a Texas corporation and You, Your heirs, agents, successors and assignees ("You"), and is made effective as of the date of execution. This Agreement sets forth the terms and conditions of Your use of JDCommerce software ("Software") and services ("Services") and explains JDCommerce's obligations to You and Your obligations to JDCommerce in relation to the Software and Services You purchase.

This Agreement as well as any additional JDCommerce policies, together with all modifications thereto, constitute the complete and exclusive agreement between You and JDCommerce concerning Your use of JDCommerce's Software and Services, and supersede and govern all prior proposals, agreements, or other communications. All JDCommerce policies and agreements specific to particular Software and Service are incorporated herein and made part of this Agreement by reference. By purchasing JDCommerce's Software or Services, You acknowledge that You have read, understood, and agree to be bound by all terms and conditions of this Agreement and any other policies or agreements made part of this Agreement by reference, as well as any new, different or additional terms, conditions or policies which JDCommerce may establish from time to time, and any agreements that JDCommerce is currently bound by or will be bound by in the future. You may view the latest version of this Agreement online.

In addition to transactions entered into by You on Your behalf, You also agree to be bound by the terms of this Agreement for transactions entered into on Your behalf by anyone acting as Your Agent, and transactions entered into by anyone who uses the account You've established with JDCommerce, whether or not the transactions were in Your behalf.

GENERAL TERMS APPLICABLE TO ALL SOFTWARE AND SERVICES

1. TERM OF AGREEMENT; MODIFICATIONS.

You agree that JDCommerce may modify this Agreement and the Services from time to time. You agree to be bound by any changes JDCommerce may reasonably make to this Agreement when such changes are made. If You have purchased Services or Software from JDCommerce, the term of this Agreement shall continue in full force and effect as long as You take advantage of and use the Software or Services. In the event You terminate Your usage, JDCommerce will not refund any amounts You have paid for Services You have consumed. You agree that JDCommerce shall not be bound by any representations made by third parties who You may use to purchase Services from JDCommerce, and that any statement of a general nature, which may be posted on JDCommerce's Web site or contained in JDCommerce's promotional materials, will not bind JDCommerce. JDCommerce may, at times, offer certain promotions with different charges and features.

You agree that You will be responsible for notifying JDCommerce should You desire to terminate Your use of JDCommerce's Services.

2. ACCURATE INFORMATION.

You agree to maintain accurate information by providing updates to JDCommerce, as needed, while You are using JDCommerce's Services. You agree You will notify JDCommerce within five (5) business days when any change of the information You provided as part of the application and/or registration process changes. Failure by You, for whatever reason, to respond within five (5) business days to any inquiries made by JDCommerce to determine the validity of information provided by You will constitute a material breach of this Agreement.

You agree that JDCommerce may use and rely on any such information provided by You for all purposes in connection with Your Services, subject to JDCommerce's Privacy Policy. If You provide any information that is inaccurate, not current, false, misleading or incomplete, or if JDCommerce has reasonable grounds to suspect that Your information is inaccurate, not current, false, misleading or incomplete, JDCommerce has the absolute right, in its sole discretion, to terminate its Services and close Your account.

3. PRIVACY.

You can view JDCommerce's Privacy Policy online, as it is applicable to all Company Software and Services. The Privacy Policy provides Your rights and Company's responsibilities with regard to Your personal information. JDCommerce will not use Your information in any way inconsistent with the purposes and limitations provided in the Privacy Policy.

4. ACCOUNT SECURITY.

You agree You are entirely responsible for maintaining the confidentiality of Your customer username and password (collectively, the "Account Access Information"). You agree You are entirely responsible for any and all activities that occur under Your account. You agree to notify JDCommerce immediately of any unauthorized use of Your account or any other breach of security. You agree JDCommerce will not be liable for any loss that You may incur as a result of someone else using Your Account Access Information, either with or without Your knowledge. You further agree You could be held liable for losses incurred by JDCommerce or another party due to someone else using Your Account Access Information. For security purposes, You should keep Account Access Information in a secure location and take precautions to prevent others from gaining access to Your Account Access Information. You agree that You will be responsible for all activity in Your account, whether initiated by You, or by others on Your behalf, or by any other means. JDCommerce specifically disclaims liability for any activity in Your account, whether authorized by You or not.

5. NO UNLAWFUL CONDUCT OR IMPROPER USE.

As a condition of Your use of JDCommerce's Software and Services, You agree not to use them for any purpose that is unlawful or prohibited by these terms and conditions, and You agree to comply with any applicable local, state, federal and international laws, government rules or requirements. You agree You will not be entitled to a refund of any fees paid to JDCommerce if, for any reason, JDCommerce takes corrective action with respect to Your improper or illegal use of its Services.

JDCommerce reserves the right at all times to disclose any information as JDCommerce deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in JDCommerce's sole discretion.

If You have purchased Services, JDCommerce has no obligation to monitor Your use of the Services. JDCommerce reserves the right to review Your use of the Services and to cancel the Services in its sole discretion. JDCommerce reserves the right to terminate Your access to the Services at any time, without notice, for any reason whatsoever.

JDCommerce reserves the right to terminate Services if Your usage of the Services results in, or is the subject of, legal action or threatened legal action, against JDCommerce or any of its affiliates or partners, without consideration for whether such legal action or threatened legal action is eventually

determined to be with or without merit. JDCommerce may review every account for excessive space and bandwidth utilization and to terminate or apply additional fees to those accounts that exceed allowed levels.

6. INTELLECTUAL PROPERTY.

You agree that JDCommerce or its licensor holds all rights, title and interest in all Software and Services and all intellectual property, including other rights related to intangible property, unless otherwise indicated. You acknowledge that no title or interest in such Intellectual Property Rights is being transferred to You and You agree to make no claim of interest in any such Services or Software.

You understand and agree that all content and materials contained in this Agreement, other policies, the JDCommerce Web site, and any affiliated Web sites, are protected by the various copyright, patent, trademark, service mark and trade secret laws of the United States, as well as any other applicable proprietary rights and laws, and that JDCommerce or its licensor expressly reserves its rights in and to all such content and materials. You further understand and agree that You are prohibited from using, in any manner whatsoever, any of the content or materials described above without the express written permission of JDCommerce or its licensor. No license or right under any copyright, patent, trademark, service mark or other proprietary right or license is granted to You or conferred upon You by this Agreement or otherwise.

7. USE OF JDCommerce SOFTWARE.

If You have licensed software from JDCommerce, JDCommerce grants You a limited, non-exclusive, nontransferable and non-assignable license to use the software for such purposes as are ordinary and customary. You are free to use the software on any computer, but not on two or more computers at one time.

You agree to not alter or modify the Software. You agree You are not authorized to combine the Software with any other software program, create derivative works based upon the Software, nor are You authorized to integrate any plug-in or enhancement which uses or relies upon the Software. You further agree not to reverse engineer, decompile or otherwise attempt to uncover the source code.

JDCommerce reserves all rights to the Software. The Software and any copies You are authorized to make are the intellectual property of JDCommerce. The source code and its organization are the exclusive property of JDCommerce and the Software is protected by copyright, including United States Copyright Law. Except as expressly provided for in this section, this Agreement does not grant You any rights in the Software and all rights are reserved by JDCommerce.

JDCommerce provides this Software "as is" without warranty of any kind either express or implied, including but not limited to the implied warranties or conditions of merchantability or fitness for a particular purpose.

8. FEES AND PAYMENT.

As consideration for the Software or Services purchased by You and provided to You by JDCommerce, You agree to pay JDCommerce at the time You order. All fees are due immediately and are non-refundable unless otherwise expressly noted, even if Your Services are suspended, terminated, or transferred prior to the end of the Services term. JDCommerce expressly reserves the right to modify pricing through email notification and/or notice on its Web site. Payment may be made by You by providing either a valid credit card, a personal or business check, an electronic funds transfer (EFT), or using JDCommerce's prepaid service, ("Prepaid Services") to establish a cash reserve for charge by JDCommerce (collectively, the "Payment Method"). Your Prepaid Services account may be funded by a money order or a personal or business check under as further described, below.

If You signed up for a monthly payment plan, Your monthly billing date will be on the first day of the month immediately following the day You purchase the Services. If You signed up for an annual (or longer) payment plan, and You elected the automatic renewal option, JDCommerce will automatically renew Your Services when they come up for renewal and will take payment from the Payment Method You have on file with JDCommerce, at JDCommerce's then current rates.

If for any reason JDCommerce is unable to charge Your Payment Method for the full amount owed JDCommerce for the Services provided, or if JDCommerce is charged a penalty for any fee it previously charged to Your Payment Method, You agree that JDCommerce may pursue all available remedies in order to obtain payment. If You pay by credit card and if for any reason JDCommerce is unable to charge Your credit card with the full amount of the Services provided, or if JDCommerce is charged back for any fee it previously charged to the credit card You provided, You agree that JDCommerce may pursue all available remedies in order to obtain payment. You agree that among the remedies JDCommerce may pursue in order to effect payment, shall include but will not be limited to, immediate cancellation without notice to You of any Services registered or renewed on Your behalf. JDCommerce reserves the right to charge a reasonable administrative fee for administrative tasks outside the scope of its regular Services, including additional costs that it may incur in providing the Services and pass along to You. These include, but are not limited to, customer service issues that cannot be handled over email but require personal service, fees incurred by third parties You have elected to use as payment methods, including PayPal, and disputes that require legal services. These charges will be billed to the Payment Method we have on file for You. You may change Your Payment Method at any time.

You agree that You are solely liable for arranging that Your Services are renewed, and that JDCommerce shall not be liable to You or any third party if it is unable to charge Your Payment Method in order to renew Your Services.

A. Prepaid Services

By using JDCommerce's Prepaid Services, You can transfer funds to JDCommerce in advance and use the balance of Your Prepaid Services Account ("Account") as You please. You can use Your Account to purchase any of the Software or Services of JDCommerce. As consideration for the Services purchased by You and provided to You by JDCommerce, You agree to pay JDCommerce in advance for the Services to be provided. Payment is to be made by You providing either a valid credit card, wire transfer, a money order, or personal or business check. You agree that if the EFT or bank draft is returned unpaid, You will pay a service charge of \$25.00 or the maximum amount allowed by law, which may be debited from Your account using an EFT or bank draft.

You can verify the remaining funds in Your Account at any time. Should You decide to terminate Your Account and seek a refund of Your Prepaid Services, Your refund will be made by check net of any discounts, including, but not limited to, reduced or waived wire transfer fees and/or the Cash Discount.

You acknowledge that funds transferred to Your Account will be held in an account by JDCommerce, which will not accrue or pay interest for

Your benefit. To the extent interest may accrue, if any, You understand and agree that JDCommerce shall be entitled to receive and keep any such amounts to cover costs associated with the Prepaid Services.

All fees are subject to change and will be updated online in this Agreement.

Your Use of Prepaid Services

Use of funds in Your Account can only be made through the JDCommerce purchase process. Purchases may not be made unless there are sufficient, available funds in Your Account at the time of purchase to cover the entire purchase amount, including any related fees as set forth herein or in other relevant agreements.

Additional funds may be added to Your Account at any time.

JDCommerce reserves the right at all times to disclose any information about Your Account as JDCommerce deems necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part from Your Account, in the sole discretion of JDCommerce.

You agree that JDCommerce makes no representations or warranties of any kind in connection with Prepaid Services. JDCommerce expressly reserves the right to deny, cancel or transfer any Account that it deems necessary, in its discretion, to protect the integrity and stability of the Prepaid Services system, to comply with any applicable laws, government rules or requirements, requests of law enforcement, in compliance with any dispute resolution process, or to avoid any liability, civil or criminal, on the part of JDCommerce, as well as its affiliates, subsidiaries, officers, directors and employees. JDCommerce also reserves the right to freeze an Account during resolution of a dispute.

B. Payment By Check

By using JDCommerce's pay by check option ("Pay By Check"), You can purchase JDCommerce Software and Services using a personal or business check.

It is Your responsibility to keep Your checking account current, and to have available funds in it. If for any reason JDCommerce is unable to withdraw the full amount owed for the Services provided, You agree that JDCommerce may pursue all available remedies in order to obtain payment. You agree that if the EFT or bank draft is returned unpaid, You will pay a service charge of \$25.00 or the maximum amount allowed by law, which may be debited from Your account using an EFT or bank draft.

By clicking the box labeled "I agree" to the terms of the Pay by Check terms, You authorize the information provided to be used for the creation of an electronic funds transfer (EFT) or bank draft, and You authorize a debit from Your checking account.

C. Pay by PayPal

By using JDCommerce's pay by PayPal, Inc. ("PayPal") option ("Pay by PayPal"), You can purchase JDCommerce Software and Services using PayPal. In consideration for the Software and Services purchased by You and provided to You by JDCommerce, You agree to allow PayPal to debit the full amount of this transaction from Your PayPal account balance or the Preferred Funding Source You established with PayPal, which is non-refundable.

It is Your responsibility to keep Your PayPal Account current, and to have available funds in it. You agree that PayPal and JDCommerce will not be responsible for payments that fail to go through as a result of Your Funding Source no longer existing, or holding insufficient funds. If for any reason PayPal is unable to withdraw the full amount owed for the Services provided, You agree that PayPal and JDCommerce may pursue all available remedies in order to obtain payment. You agree that if the transaction is returned unpaid, You will pay a service charge of \$25.00 or the maximum amount allowed by law, which may be debited from Your account by PayPal or charged to Your Preferred Funding Source.

By clicking the box labeled "I agree" to the terms of the Pay by PayPal terms, You authorize the information provided to be used for the creation of an electronic funds transfer (EFT), and You authorize a debit from Your PayPal Account or Preferred Funding Source.

9. REPRESENTATIONS AND WARRANTIES.

You, or the individuals who electronically execute this Agreement on behalf of You hereby represent and warrant that they have the right, power, legal capacity and appropriate authority to enter into this Agreement, and that they own and have not transferred to any other person or entity any of the rights, claims or interests that are the subject of this Agreement. You represent and warrant that You are 18 years of age or older, or that You have an agent authorized by law to represent You who is 18 years of age or older who is entering into this Agreement on Your behalf.

10. LIMITATION OF LIABILITY.

IN NO EVENT SHALL JDCommerce BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL, FOR ANY MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTIES, EITHER EXPRESS OR IMPLIED, ANY BREACH OF THIS AGREEMENT OR ITS INCORPORATED AGREEMENTS AND POLICIES YOUR INABILITY TO USE THE SOFTWARE OR SERVICES, YOUR LOSS OF DATA OR FILES OR OTHERWISE, EVEN IF JDCommerce HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Some states may not allow such a broad exclusion or limitation on liability for damages as contained herein. In such states, JDCommerce's liability is limited to the full extent permitted by law. You agree that in no event shall JDCommerce's maximum aggregate liability exceed the total amount paid by You for the particular Software or Service in dispute purchased from JDCommerce.

11. DISCLAIMER OF WARRANTIES.

JDCommerce expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Services are provided on an "As Is" and "As Available" basis. JDCommerce makes no warranty that its services will meet your requirements, or that the services will be uninterrupted, timely, secure, or error free, or that defects will be corrected. JDCommerce does not warrant, nor make any representations regarding the use, or results of, any of the services it provides, in terms of their

correctness, accuracy, reliability, or otherwise.

Some jurisdictions do not allow the disclaimer of implied warranties, in which event that foregoing disclaimer may not apply to You.

12. INDEMNIFICATION.

You agree to defend, indemnify and hold harmless JDCommerce and its contractors, agents, employees, officers, directors, shareholders, and affiliates from any loss, liability, damages or expense, including reasonable attorneys' fees, resulting from any third party claim, action, proceeding or demand related to Your (including Your agents affiliates, or anyone using Your account, software or services with JDCommerce whether or not on Your behalf, and whether or not with Your permission) use of the Software or Services You purchased from JDCommerce or Your breach of this Agreement or incorporated agreements and policies. In addition, You agree to indemnify and hold JDCommerce harmless from any loss, liability, damages or expense, including reasonable attorneys' fees, arising out of any breach of any representation or warranty provided herein, any negligence or willful misconduct by You, or any allegation that Your account infringes a third person's copyright, trademark or proprietary or intellectual property right, or misappropriates a third person's trade secrets. This indemnification is in addition to any indemnification required of You elsewhere. Should JDCommerce be notified of a pending law suit, or receive notice of the filing of a law suit, JDCommerce may seek a written confirmation from You concerning Your obligation to indemnify JDCommerce. Your failure to provide such a confirmation may be considered a breach of this agreement. You agree that JDCommerce shall have the right to participate in the defense of any such claim through counsel of its own choosing. You agree to notify JDCommerce of any such claim promptly in writing and to allow JDCommerce to control the proceedings. You agree to cooperate fully with JDCommerce during such proceedings.

You agree You will not be entitled to a refund of any fees paid to JDCommerce if, for any reason, JDCommerce takes corrective action with respect to Your improper or illegal use of its services. You also agree that if JDCommerce is notified that a complaint has been filed with a governmental, administrative or judicial body, that JDCommerce, in its sole discretion, may take whatever action JDCommerce deems necessary regarding further modification, assignment of and/or control of your account to comply with the actions or requirements of the governmental, administrative or judicial body until such time as the dispute is settled.

13. GOVERNING LAW, VENUE; WAIVER OF TRIAL BY JURY.

This agreement shall be deemed entered into in the State of Texas. You agree that the laws and judicial decisions of Montgomery County, Texas, shall be used to determine the validity, construction, interpretation and legal effect of this Agreement. You agree that any action relating to or arising out of this Agreement shall be brought in the courts of Montgomery County, Texas.

You agree to waive the right to trial by jury in any proceeding that takes place relating to or arising out of this Agreement.

14. NOTICES.

You agree that all notices (except for notices concerning breach of this Agreement) from JDCommerce to You may be posted on our Web site. Notices concerning breach will be sent either to the email or postal address You have on file with JDCommerce. In either case, delivery shall be deemed to have been made five (5) days after the date sent.

Notices from You to JDCommerce shall be made either by email, sent to the address provided on the JDCommerce Web site, or first class mail to JDCommerce's address at:

JDCommerce, Inc., P.O. Box 130542, Spring, TX 77393.

15. HEADINGS.

The headings in the Agreement are descriptive only and in the event of a conflict between a heading and the underlying terms of this Agreement, the terms of this Agreement shall control.

16. ENTIRE AGREEMENT.

You agree that this Agreement including the policies and agreements it refers to constitute the complete and only Agreement between You and JDCommerce regarding the Services contemplated herein.

17. SEVERABILITY.

You agree that the terms of this Agreement are severable. If any part of this Agreement is determined to be unenforceable or invalid, that part of the agreement will be interpreted in accordance with applicable law as closely as possible, in line with the original intention of both parties to the Agreement. The remaining terms and conditions of the Agreement will remain in full force and effect.

18. WAIVER.

The failure of JDCommerce to enforce any of the provisions within this Agreement or its incorporated agreements and policies against You or others shall not be construed to be a waiver of the right of JDCommerce thereafter to enforce such provisions.

19. FORCE MAJEURE.

JDCommerce will make every effort to keep its Web site and Services operational. However, certain technical difficulties and other factors outside of its control may, from time to time, result in temporary service interruptions. You agree not to hold JDCommerce liable for any of the consequences of such interruptions.

20. SURVIVAL.

Sections 1, 6, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 shall survive any termination or cancellation of this Agreement.

21. NO THIRD PARTY BENEFICIARIES.

Nothing in this Agreement, express or implied, is intended to confer upon any third party any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

Revised: 10/09/2007

Copyright © 2003 JDCommerce, Inc. All Rights Reserved.