



AbeTech Professional Services Terms and Conditions

CLIENT'S SUBMISSION OF A PURCHASE ORDER OR CUSTOMER'S PAYMENT OF APPLICABLE FEES OR CHARGES TO ABETECH SIGNIFIES CLIENT'S ACCEPTANCE OF AND AGREEMENT TO THESE PROFESSIONAL SERVICES TERMS & CONDITIONS.

These Professional Services Terms & Conditions and any purchase order constitute a binding legal agreement between AbeTech and Client which applies to any and all services specified in the purchase order.

These Professional Services Terms & Conditions provide the fundamental basis for AbeTech's agreement to provide the services to Client. The purchase order is not complete without these Professional Services Terms & Conditions. AbeTech would not have accepted the purchase order without these Professional Services Terms & Conditions, and would not have entered into any agreement to provide the services to Client without these Professional Services Terms & Conditions.

1. The quoted/proposed project (the "Project") to provide certain services and/or deliverables will commence upon AbeTech's receipt of the purchase order and signed copy of project proposal and/or Statement of Work. Unless otherwise stated, receipt of a purchase order will bind client to these Terms and Conditions.
2. Unless there is written notice to the contrary, the deliverables will be deemed to be finally accepted thirty (30) days after delivery of all hardware and software. Any such written notice of non-acceptance shall state the specific reasons for non-acceptance of the deliverables.
3. Client agrees to pay all related expenses incurred by AbeTech in connection with the Project, including, but not limited to, airfare, rental cars, taxis, lodging, mileage and meals with prior approval of client.
4. The purchase order, proposal and/or Statement of Work may include a payment schedule that provides for payments to become due and payable based upon the achievement of milestones set forth in the payment schedule. AbeTech and client agree that the milestones and corresponding payment amounts represent the parties' good-faith estimate of the progress of AbeTech's costs with respect to performing the services, plus a corresponding portion of AbeTech's overhead, profit, and other markup, and do not necessarily represent the overall progress of the services themselves. If the Project is terminated in accordance with the purchase order, proposal, Statement of Work and/or these Professional Services Terms and Conditions, then upon the effective date of such termination: (i) AbeTech will submit to client an itemized final invoice for any payments (including fees, expenses, and taxes) that were not previously invoiced; (ii) client will pay the final invoice and all prior invoices in accordance with the applicable payment schedule; (iii) AbeTech will deliver any incomplete or in-process deliverables relating to the services, if and to the extent required by the purchase order, proposal and/or Statement of Work; and (iv) AbeTech will have no further responsibility for any



incomplete or in-process services (including work product and deliverables) as of the effective date of termination.

5. If the scope of the Project changes significantly from that which is defined in the accepted proposal, AbeTech reserves the right to renegotiate pricing. In the event AbeTech and client cannot agree upon new pricing, the Project shall terminate and client shall pay AbeTech for services rendered and expenses incurred to the date of such termination, at AbeTech's prevailing rates for time and materials.
6. Any information or documentation acquired by AbeTech during the specification process regarding the undersigned client will be considered proprietary and will not be released by AbeTech without the express written consent of client (on company letterhead). Client shall indemnify, defend and hold harmless AbeTech from and against any and all claims, demands, damages, losses, liabilities, actions, causes of action, suits, costs and expenses, including, without limitation, attorneys' fees, expert witness fees, consultants' fees and other legal costs, incurred or suffered by AbeTech as a result of or in connection with any claim that any information or documentation supplied by client for this Project infringes the patent, trademark, copyright, tradename, designs, formulas, data or other intellectual property rights of any third party or parties. This indemnity shall survive completion or any other termination of the Project.
7. AbeTech reserves the right to reuse and re-license programs provided in this Project.
8. AbeTech warrants it will render its services hereunder in a good and workmanlike manner. As AbeTech's sole responsibility and client's exclusive remedy in the event of any material failure to meet such standard, AbeTech shall make a reasonable effort to remedy any resulting discrepancies. Any claim based on the foregoing warranty must be submitted in writing within (30) days after delivery of the relevant service. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ABETECH DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED WITH REGARD TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
9. AbeTech is responsible only for the services described in the purchase order. AbeTech shall have no responsibility for defects in hardware, media, software or services supplied by persons other than AbeTech or for modifications to any hardware, media or software which are made by persons other than AbeTech.
10. IF THE DELIVERABLES ARE REASONABLY UNACCEPTABLE TO CLIENT, CLIENT'S SOLE REMEDY SHALL BE REPLACEMENT OR REPAIR OF THE DELIVERABLES BY ABETECH. IF THE DELIVERABLES CANNOT BE RENDERED ACCEPTABLE AFTER REASONABLE EFFORTS BY ABETECH TO REPLACE OR REPAIR THE DELIVERABLES, OR IF THE DELIVERABLES FAIL TO PERFORM ACCORDING TO SPECIFICATIONS, ABETECH'S AGGREGATE LIABILITY TO CLIENT SHALL NOT EXCEED THE AMOUNT PAID TO ABETECH FOR THE DELIVERABLES. IN NO EVENT WILL ABETECH BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF DATA OR USE, LOST PROFITS AND CLAIMS, ACTIONS OR DEMANDS AGAINST CLIENT BY ANY



THIRD PARTY, EVEN IF ABETECH HAS BEEN ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MAY BE INCURRED.

11. In the event of any breach by client of its obligations hereunder, including, without limitation, any failure or refusal to pay any amount due hereunder, AbeTech may, but shall not be required to, stop work on the Project until all such amounts, together with accrued interest thereon, are paid in full, and/or terminate the Project entirely. In either event, AbeTech shall be entitled to receive compensation for all services rendered to the date of termination at AbeTech's time and materials rates then in effect, and reimbursement of all expenses incurred.
12. Force Majeure: Any delay in or failure of performance by AbeTech shall not constitute a default hereunder nor give rise to any claim for damage if and to the extent such delay or failure is caused by occurrences beyond the control of AbeTech, including, without limitation, acts of Nature or a public enemy, acts of war, public disorders, fires, floods, explosions, accidents, or failure of telecommunications equipment, or any causes whether or not of the kinds specifically named above, which are not within the control of AbeTech and which, by the exercise of reasonable diligence, AbeTech is unable to prevent.
13. The laws of the State of Minnesota, without reference to the conflict-of-laws doctrine of any jurisdiction, shall govern the rights and duties of the parties hereunder. All disputes arising from or related to the Project shall be submitted to the solely and exclusive venue of the federal or state courts in and for Hennepin County, Minnesota. The parties agree to submit themselves to the sole and exclusive jurisdiction of such courts.