

Last Updated October 31, 2024

THIS DOCUMENT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, AS WELL AS CONDITIONS, LIMITATIONS, AND EXCLUSIONS THAT MIGHT APPLY TO YOU. PLEASE READ IT CAREFULLY.

These Terms and Conditions of Sale (these “Terms”) govern the sale of certain goods and/or services by The Villages Operating Company, a Florida corporation, with offices located 7580 Middleton Drive, Middleton, Florida 34762, d/b/a The Villages Technology Solutions Group (“TSG”) to you (“Customer”). This may include the purchase of hardware and equipment manufactured by TSG (“Equipment”), software developed by TSG (“Software”), hardware and software manufactured or developed by a third party (“Third Party Products,” and together with Equipment and Software, “Products”), and services provided by TSG (“Services”). Equipment, Software, Third Party Products, and Services will be identified on a quotation, service request, proposal, order acknowledgement, or invoice (each a “Sales Confirmation”). Unless the Sales Confirmation expressly states that it is governed by a separate written agreement, these Terms will govern the purchase of the listed Equipment, Software, Products, and Services.

IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU SHOULD NOT PURCHASE THE ITEMS LISTED ON THE SALES CONFIRMATION.

1. Agreement. These Terms and the Sales Confirmation comprise the entire agreement between the parties with respect to the purchase of the goods and services identified on the Sales Confirmation (collectively, the “Agreement”), and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms. Customer accepts these Terms by signing and returning TSG's quotation, by sending a purchase order in response to the quotation, by submitting instructions to TSG to ship the Product or by accepting and/or paying for the product or service. Neither TSG's subsequent lack of objection to any terms, nor the delivery of the Products or Services, shall constitute an agreement by TSG to any such terms. Trade custom, trade usage, and past performance are superseded by these Terms and shall not be used to interpret these Terms. TSG and Customer may each be referred to herein as a “Party,” or may be referred to collectively as the “Parties.”
2. Effective Date and Changes. Changes to these Terms may be posted from time-to-time. The version of these Terms that apply to any given transaction will be the version in effect as of the date shown on the Sales Confirmation.
3. Services.
 - a. For purchases of Services, TSG will use commercially reasonable efforts provide to Customer the Services described in the Sales Confirmation.
 - b. Unless expressly identified as “fixed fees” in the Sales Confirmation, all fees and costs shown in the Sales Confirmation are estimates only. All delivery dates and hours shown on the Sales Confirmation are also estimates only. For any services that are not fixed fees, Customer shall be charged, and agrees to pay (i) for the actual hours worked at TSG's standard rates in effect at the time the Services are rendered, and (ii) expenses incurred in connection with the provision of the Services.

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- c. Customer shall provide all materials, support, and access necessary for TSG to provide the Services and respond promptly to any requests from TSG for instructions, information, data, materials, credentials, or approvals. TSG shall not be responsible for delays, errors, or service impairments caused by Customer or Customer's failure to heed TSG instructions or recommendations.
 - d. TSG and its licensors shall own and retain all intellectual property rights in and to all inventions conceived, reduced to practice, or otherwise created in connection with performance of the Services, and in and to all works of authorship, data, work product and deliverables, created in whole or in part in connection with the Services. Subject to full payment of all amounts owed for the Services, TSG shall grant, and hereby does grant, to Customer a limited, revocable right and license to use any deliverables provided by TSG to Customer for Customer's personal or internal business purposes only. Customer may not resell, license, sublicense, or create derivative works based on any deliverables or work product provided by TSG. TSG otherwise expressly reserves any and all rights in and to all deliverables, work product, inventions, and all intellectual property created, improved, or used in connection with the Services. To the extent any deliverables include any third party materials, such third party materials shall be deemed and treated as Purchased Items (pursuant to Section 4(b) below), and may be subject to separate license terms. TSG shall not be liable in any way for any third party materials included in any deliverable.
4. TSG Software. To the extent the Sales Confirmation includes Software (meaning Software for which TSG is the owner or licensor), such Software, and all copies thereof, is licensed only and is not purchased. Any Software may be subject to separate license terms either included with the Software in writing or presented through a shrinkwrap or clickwrap agreement. To the extent the terms and conditions of any such written, shrinkwrap, or clickwrap agreement conflicts with these Terms, the terms and conditions of the separate written, shrinkwrap, or clickwrap agreement shall prevail. In the absence of a written, shrinkwrap, or clickwrap agreement, TSG shall grant, and hereby does grant, upon receipt of full and final payment, a limited, revocable, non-exclusive, non-transferrable, non-sublicensable license for Customer to copy, perform and use the Software solely (i) for their own, internal business purposes, (ii) in compliance with all applicable laws and regulations, (iii) in the United States only, and (iv) for a limited term of one (1) year from the date shown on the Sales Confirmation, or for such other term as expressly shown on the Sales Confirmation (in which case the term shown on the Sales Confirmation shall prevail). Customer agrees to comply with all terms, restrictions, and limitations (if any) shown on the Sales Confirmation in connection with the use of any Software.
5. Warranties.
- a. *Services Warranty.* TSG warrants only that it will use commercially reasonable efforts to render all Services in a professional and workmanlike manner but makes no other warranties in connection with the Services, all such Services being "AS IS."
 - b. *No Warranty for Purchased Items.* To the extent the Sales Confirmation includes, or the Services require purchase of, any hardware, software licenses, Equipment, or third party services ("Purchased Items"), such Purchased Items shall have only those warranties provided by the original manufacturer or provider. To obtain warranty service for defective third party products and licenses, please follow the instructions included in the manufacturer's warranty. For warranty claims relating to third party services, please contact the service provider. As between Customer and TSG, all such Purchased Items are AS IS with no warranties whatsoever, express or implied, by TSG. Without limiting the foregoing, TSG does not warrant or represent that any Purchased Items will perform to any given standard, meet Customer's needs, be secure or malware free, or be non-infringing. **YOU AFFIRM THAT TSG SHALL NOT BE LIABLE, UNDER ANY CIRCUMSTANCES, FOR ANY BREACH**

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OF WARRANTY CLAIMS OR FOR ANY DAMAGES ARISING OUT OF THE MANUFACTURER'S FAILURE TO HONOR ITS WARRANTY OBLIGATIONS TO YOU OR ANY DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY THE USE OF PURCHASED ITEMS.

- c. *TSG Software.* TSG warrants only that Software, at the time of delivery, will substantially conform to the applicable documentation. Without limiting the foregoing, TSG does not warrant or represent that any Software will perform to any given standard, meet Customer's needs, be secure or malware free, or be non-infringing.
 - d. *NO OTHER WARRANTIES.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 5(a), 5(b) AND 5(c) ABOVE, TSG MAKES NO WARRANTIES WHATSOEVER IN CONNECTION WITH THE SERVICES OR PURCHASED ITEMS OR SOFTWARE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE DISCLAIMED INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, TITLE, PERFORMANCE, OR NON-INFRINGEMENT.
6. Limitation of Liability. TSG's sole and exclusive liability, and Customer's sole and exclusive remedy, for breach of this Agreement or any warranty Customer receives in connection with this Agreement shall be (i) in connection with the Services, TSG will, in its sole discretion, re-perform any non-conforming Services at no charge or refund any amounts actually received for the non-conforming portion of the Services, (ii) in connection with Software, TSG will, in its sole discretion, correct material non-conformities at no charge or refund any amounts actually received for the non-conforming Software for any period of time subsequent to the date on which the claim was made, and (iii) with respect to Purchased Items, upon return of the Purchased Item in unopened, unused condition, suitable for resale, TSG will refund amounts actually received for such Purchased Item. In the event a Purchased Item cannot be returned in an unopened, unused condition, suitable for resale, Customer's only recourse shall be through and by the original manufacturer. IN NO EVENT SHALL TSG BE LIABLE FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OF ANY KIND WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL TSG'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID TO TSG UNDER THE APPLICABLE SALES CONFIRMATION.
7. Privacy. Our Privacy Statement, available here, governs the processing of all personal data collected from you in connection with purchases made pursuant to these Terms.
8. Indemnification. Customer will indemnify, defend, and hold TSG and its affiliates and their respective, owners, officers, directors, employees, and agents harmless in the event of a third party claim arising from, in whole or in part, (i) Customer's or its representative's purchase or use of any Services, Software, or Purchased Items, or (ii) Customer's or its representatives' intentional, negligent or willful acts or omissions, or (iii) TSG following any instructions or complying with any requests of Customer or its representatives, or (iv) TSG's use of any data or materials provided or made accessible by Customer or its representatives.

9. Miscellaneous.

- a. *Entire Agreement/Amendment.* These Terms, together with the Sales Confirmation and our Privacy Statement, constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. No amendment to or modification of this Agreement is effective unless it is in writing, expressly identified as an amendment to these Terms, and signed by both Parties.
- b. *Severability.* If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision.
- c. *Waiver.* No waiver by TSG of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by TSG. No failure of TSG to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement, shall operate or be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder by TSG precludes any other or further exercise thereof, or the exercise of any other right, remedy, power, or privilege.
- d. *No Third-Party Beneficiaries.* This Agreement benefits solely the Parties and their respective permitted successors and assigns, and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement. Notwithstanding the foregoing, it is understood and agreed that all waivers and limitations of liability herein shall extend to TSG as well as all of its affiliates and all of their respective employees, officers, owners, and contractors.
- e. *Choice of Law, Venue.* All matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the State of Florida, without giving effect to any conflict of laws provisions or principles or rules that would require or permit the application of the laws of any other jurisdiction. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement in any forum other than the US District Court for the Middle District of Florida, or the courts of the State of Florida sitting in Sumter County, Florida, and any appellate court from any thereof.
- f. *Waiver of Right to a Jury.* EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. ANY PARTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT, AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO OF THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY THE OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
- g. *Opportunity to Cure.* In the event of any actual or alleged breach, misconduct, or omission by TSG, Customer shall give TSG written notice thereof and TSG shall have no less than thirty (30) days to cure such alleged breach, misconduct or omission prior to Customer instituting any formal legal proceeding against TSG or any of its affiliates, or any of their respective owners, officers, employees, contractors, or agents.

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- h. *Force Majeure*. TSG shall not be liable or responsible or be deemed to have defaulted for any failure or delay when and to the extent such failure or delay is caused by or results from acts beyond the TSG's control.