

Terms and Conditions of Purchase

Version 3, effective as of November 22, 2022

GENERAL

In these Terms and Conditions of Purchase (“Purchase Terms”):

1. “Affiliate” means any entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control of such party; ‘control’ for such purposes means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.
2. “Customer” means an individual or a legal entity purchasing Product directly from Errant Photon.
3. “Individual Consumer” means an individual who purchases Errant Photon Products, or is otherwise in a contractual relationship or deals with Errant Photon in relation to Errant Photon Products outside the scope of their trade, business, craft or profession.
4. “Errant Photon” means:

Errant Photon P.S.A. with its registered office at al. Jana Pawła II 27, 00-867 Warsaw, Poland, registered in the commercial register of the National Court Register maintained by the District Court in Warsaw, XIII Commercial Division of the National Court Register, under KRS Number: 0000933892, Tax Identification Number (NIP): 5272978308, National Official Business Register Number (REGON): 520505128, with the share capital of PLN 670 126.18

5. “Product” means any software program or service made available by Errant Photon, unless otherwise expressly stated in these Purchase Terms. The use of Product by Customer is governed by the applicable Terms of Use.
6. “Errant Photon Website” or “Site” means any website that is the property of Errant Photon, including but not limited to everything hosted under the domain errantphoton.com
7. “Terms of Use” mean the terms and conditions of end-user license agreement, subscription terms, terms of service, or other standard customer agreements set forth by Errant Photon and applicable to Product in addition to these Purchase Terms.
8. “Privacy Policy” means the Errant Photon Privacy Policy available at <https://www.errantphoton.com/privacy>, which may be updated from time to time.
9. “Personal data” means any information relating to an identified or identifiable natural person.

Customer accepts these Purchase Terms by placing an order for Product with Errant Photon.

Orders placed by Customer with a Errant Photon reseller are subject to terms and conditions of purchase set forth by that reseller.

ORDER PLACEMENT AND ACCEPTANCE

Customer may place an order with Errant Photon:

1. online on the Errant Photon Website; or
2. by email using the appropriate contact information of Errant Photon.

Order details shall be in English or Polish. Customer can modify order details before acceptance of Customer's order by Errant Photon by submitting a written notice to Errant Photon. English or Polish are the preferred language for order-related enquiries.

Any order is not binding upon Errant Photon until accepted by Errant Photon. Non-acceptance of an order may be the result of one of the following:

1. failed payment;
2. growing backlog or negative payment history;
3. incomplete or incorrect order details, such as missing email address for delivery, missing Customer billing address, or a pricing or product description error, among others;
4. ineligibility according to the order criteria (e.g. entitlement to upgrade or to certain Product purchase options restricted to particular users or purpose of use); or
5. for any reason at the sole discretion of Errant Photon.

Any additional or conflicting terms on an order will not apply unless specifically agreed to in a separate written agreement signed by Errant Photon.

PRICES AND PAYMENT TERMS

These terms apply to Products that are offered to Customer in return for a fee paid to Errant Photon.

Errant Photon, at its sole discretion, sets the prices for Products in one of the following currencies depending on Customer's country: USD, EUR, CNY, INR, GBP, PLN.

Errant Photon accepts major debit and credit cards (collectively, "Payment cards") for online orders via third-party payment gateway providers, including, but not limited to, Stripe. Errant Photon is not responsible for any (i) payment failure resulting from inaccurate payment card details provided by Customer when placing an online order, (ii) any restrictions applicable to payment card by Customer's bank or payment service provider, (iii) payment gateway failure, or (iv) misuse, abuse, unauthorized use, or fraudulent use of Payment cards.

In relation to other forms of payment, Errant Photon will only accept orders from existing corporate Customers that have no outstanding payments past due. Orders can only be paid by wire transfer on net 30 days terms (payable within 30 days from the date Products are delivered), unless otherwise specified by Errant Photon. Orders from newly registered corporate Customers, offline orders from

individual Customers, and all orders from Customers specified in clause 4(E) are subject to advance payment by wire transfer.

In selected countries and territories, Customer may choose to appoint an individual or a legal entity to pay for orders placed by Customer, on its behalf. In such case, Customer remains Errant Photon's sole contractual counterparty, with rights and obligations as set out in these Purchase Terms and applicable Terms of Use.

PRODUCT VERSIONS

Errant Photon's Products are offered in two versions with different pricing and eligibility:

1. Indie Version
2. Studio Version

In order to be eligible to purchase Indie Version Customer must meet the following conditions:

1. Customer and its Affiliates collectively have in the current calendar year or had in the most recently completed calendar year, directly or indirectly, aggregate gross revenues from all sources less than 100,000 USD. Additionally, any funding received by this Customer or its Affiliates, including private equity, venture capital, angel or mezzanine financing, and all other forms of funding, in the last 24 months is less than \$300,000 USD.
2. The total number of users permitted to use the Product concurrently may not exceed 5 unless otherwise agreed by Errant Photon.

PRODUCT DELIVERY

Errant Photon ships no physical Products. Any details necessary to enable Customer to download and/or use the purchased Product will be delivered by Errant Photon to Customer via email to the email address provided by Customer and made available to Customer via Errant Photon Website. Customer is responsible for providing Errant Photon with a valid email address for delivery purposes.

Should Errant Photon's Products not be delivered immediately, Errant Photon will use its commercially reasonable efforts to deliver Product purchased by Customer within 2 business days of the order acceptance, unless otherwise provided by any agreement between Errant Photon and Customer. Errant Photon shall not be liable for any failure to deliver Product within this timeframe.

Products shall be deemed delivered to Customer immediately or on the date when Errant Photon sends a Product email to the email address provided by Customer. Errant Photon shall not be liable for any failure to deliver Product to Customer due to non-delivery of an email message concerning Product.

TAXES AND DEDUCTIONS

Product prices do not include any national, state, or local sales tax, use tax, value added tax (VAT), goods and sales tax (GST), digital services tax (DST), or other tax (“Local Tax”).

If a purchase is subject to any Local Tax, that Local Tax can be added to the invoice.

Also, Errant Photon reserves the right to use any global service provider, including Stripe, as its commissionaire to invoice Customer. Notwithstanding the foregoing, Errant Photon remains Customer’s counterparty and no other provisions of these Purchase Terms shall be affected.

If there is a possibility to issue the invoice without Local Tax, Customer is obliged to provide Errant Photon with a valid Local Tax number (e.g. VAT ID) or valid exemption documentation.

Customer bears the sole responsibility for any withholding tax liabilities, and no deductions shall be made by Customer from the amount payable to Errant Photon under any invoice.

Any correction to an invoice for tax reasons (in particular based on the provision of Customer’s Local Tax number) shall be requested by Customer by the 7th day of the month following the month when the affected invoice was issued, at the latest. Errant Photon reserves the right to request any supporting document relating to the requested correction and/or reject any such request if received after this date.

TEMPORARY SUSPENSION FOR NON-PAYMENT

If Customer fails to pay any amount on time under these Purchase Terms and the applicable Terms of Use, or any other agreements Customer entered into with Errant Photon, Errant Photon reserves the right to, at its sole discretion, suspend Customer’s access to all Errant Photon’ Products until such time as Errant Photon is satisfied that all payments have been made or terminate the Terms of Use, in the manner specified in the applicable Terms of Use.

If Errant Photon suspends Customer’s access to Errant Photon’ Products for any failure to, or delay in, payment of any amount, Customer must pay the entire outstanding amount in order to restore its access to Errant Photon’ Products. During any period of suspension, Customer hereby agrees that Errant Photon is entitled to charge Customer for the entire period for which Customer has placed an order for subscription to Errant Photon Products.

REFUND, WITHDRAWAL AND SUPPORT

Any refund request following the Product purchase date will be subject to prior authorization by Errant Photon, and acceptance of such request shall be at the sole discretion of Errant Photon, unless otherwise provided by applicable law.

Any Customer in the position of an Individual Consumer has the right to withdraw from the Product purchase contract within 14 days without giving any reason. The withdrawal period will expire after 14 days from the day of purchase (the day of conclusion of the contract). To exercise the right of withdrawal, Customer must inform Errant Photon of the decision to withdraw from the purchase by an unequivocal statement (e.g. a letter sent by post, fax or e-mail).

To meet the withdrawal deadline, it is sufficient to send the communication concerning exercise of the right of withdrawal before the withdrawal period has expired. Errant Photon shall reimburse to Customer in the position of an Individual Customer all payments received, including the costs of delivery (with the exception of the supplementary costs resulting from such Customer's choice of a type of delivery other than the least expensive type of standard delivery offered by Errant Photon), without undue delay and in any event not later than 14 days from the day on which Errant Photon is informed about the decision to withdraw from the purchase. Errant Photon will carry out such reimbursement using the same means of payment as the particular Customer used for the initial transaction, unless such a Customer has expressly agreed otherwise; in any event, Customer will not incur any fees as a result of such reimbursement.

If a Product shows any defects or does not function properly, Customer may contact Errant Photon here: <https://www.errantphoton.com/report-error>

Any Customer in the position of an Individual Consumer has the right to request:

1. that any defect be removed without undue delay free of charge;
2. if the removal is not possible, an appropriate discount corresponding to the actual malfunction of the Product.

The above Individual Consumer rights are applicable only in respect to any defects or malfunctions existing at the time of the Product purchase, even if apparent later. Customer in the position of an Individual Consumer is entitled to assert their rights arising from a defect within twelve months of the purchase. If a defect occurs within six months, the Product is presumed to have already been defective upon purchase.

EXPORT CONTROL

Customer shall comply with all applicable laws and regulations with regards to economic sanctions; export controls, import regulations and trade embargoes (collectively "Export Control Laws"), including those of the European Union and United States). Customer acknowledges that it is not an entity targeted by Export Control Laws nor is it otherwise owned or controlled by or acting on behalf of any person targeted by Export Control Laws. Further, Customer agrees to ensure that neither Errant Photon Products, nor any related technical information, are:

1. Downloaded, transferred, exported, or re-exported directly or indirectly in violation of Export Control Laws; or
2. Used for any purpose prohibited by Export Control Laws, including but not limited to nuclear, chemical, or biological weapons proliferation; or
3. exported to restricted and/or embargoed destinations (including, but are not limited to, Cuba, Iran, North Korea, Syria, Crimea region and territories of the so-called Donetsk or Luhansk People's Republics), prohibited end-user(s); and/or
4. participate in prohibited end-use and/or proliferation activities.

Errant Photon will not be liable to Customer for any failure to provide Product, as a result of any government action that Errant Photon reasonably believes may adversely impact its obligations under these Purchase Terms, its business, or its reputation.

MISCELLANEOUS

No terms and conditions other than the terms and conditions contained herein shall be binding upon Errant Photon, unless explicitly accepted by Errant Photon in writing and signed by a duly authorized representative of Errant Photon. If Customer's terms and conditions of purchase are different from, or are in addition to, these Purchase Terms, these Purchase Terms shall prevail and Customer's terms are hereby rejected, unless otherwise explicitly agreed in writing with Errant Photon.

These Purchase Terms are subject to change at any time by Errant Photon by posting the updated Purchase Terms on a Errant Photon Website.

Customer declares having had sufficient opportunity to review these Purchase Terms, understood the content of all of their clauses, negotiated their terms, and sought independent professional legal advice in that respect, before accepting these Purchase Terms. Consequently, any statutory "form contracts" ("adhesion contracts") regulations shall not be applicable to these Purchase Terms.

Nothing in this Purchase Terms limits any rights Customer in the position of an Individual Consumer might have under applicable consumer protection laws.

These Purchase Terms shall be governed by the laws of Poland, without reference to conflict of laws principles, and the parties agree that any litigation relating to these Purchase Terms may only be brought in, and shall be subject to the jurisdiction of, any Court of Poland, unless provided otherwise by applicable consumer law. Any disputes between Errant Photon and an Individual Consumer can be settled out of court through the extrajudicial dispute resolution entity as described under <http://polubowne.uokik.gov.pl> or through the designated on-line platform accessible here: <https://webgate.ec.europa.eu/odr/main/index.cfm?event=main.home.show&lng=PL>

The United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Purchase Terms.

Errant Photon reserves the right (and Customer grants its consent with it) to assign or otherwise transfer the agreement based on these Purchase Terms or any rights or obligations under this Purchase Terms, in whole or in part, without further Customer's consent to any Errant Photon Affiliate. If the foregoing is in breach of applicable consumer laws, Individual Consumers have the right to terminate their contract with Errant Photon.

PERSONAL DATA

Information about personal data processing and about Customer's rights can be found in the Privacy Policy.

COMMUNICATION

Errant Photon may communicate with Customers by sending them emails aiming to help avoid interruption of a service. Such examples include but are not limited to:

1. payment reminders;
2. debt reminders;
3. license expiration reminders;
4. license delivery and confirmation emails;
5. credit card expiration reminders about cards saved for automatic payments for licenses;
6. purchase follow-ups requesting information about Customer's company for enhancement of customer service;
7. license assignment emails;
8. administrator invitation emails; and
9. purchase administration requests.

For any questions regarding these Purchase Terms, please contact us at contact@errantphoton.com.