

Theora Purchase Terms

These Purchase Terms (the "Terms") cover the purchase of Theora products or other products (collectively, "Items") from Clairvoyant Networks, Inc. ("Clairvoyant"). By placing an order for Items, you consent to the provisions in these Terms.

THESE TERMS CONTAIN A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 6. All rights not granted under these Terms are reserved by Clairvoyant.

1. Scope Of The Terms

A. **Purchase From Clairvoyant:** These Terms apply to (i) web-based purchases from Clairvoyant, whether through theoracare.com or from a third-party site, where Clairvoyant Networks is identified as the Seller or Store Owner or (ii) purchases made directly from Clairvoyant, using a purchase order or other written offer to purchase.

B. **Indirect Purchases:** Items are also offered for sale by third-party resellers or distributors. If you purchase an Item from a third-party, the terms and conditions of sale offered by that party will apply to your purchase. These Terms are secondary to your agreement with a third-party seller and will apply to the extent that these Terms (i) are not in conflict with the terms of your agreement with that seller and (ii) apply to any residual matters between you and Clairvoyant.

2. Intended Use of Items

A. If you purchase Theora products, it is important to understand

1) *Theora devices, components, services, or other purchased Items (collectively "Theora Components") are not medical devices, in any context.* Therefore, regardless of how or by whom a Theora Component is being used, whether (i) as a single device or (ii) in combination with other Theora Components or third-party solutions, Theora Components are not designed or intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease or bodily condition.

2) Clairvoyant is not responsible for health-related decisions that are based on information provided by Theora Components or received from Clairvoyant.

B. Use of Theora Components and your Theora account are governed by the Theora Terms and Conditions.

3. Purchases, Sales, Shipping

A. **Your Order, Acceptance and Cancellation:** Your order is an offer to buy. Clairvoyant may send an order confirmation email; however, the order is not accepted until the earlier of (i) the Item is delivered to a commercial carrier with instructions to deliver the Item to you; (ii) you receive notice that the Item has shipped or (iii) the Item is delivered to the location specified in your order. Clairvoyant reserves the right at any time, even after a confirmation email has been sent, to decline or cancel your order or to limit order quantities for any reason, including errors or suspected fraud. If an order is canceled by Clairvoyant: (i) you will not be charged or (ii) any charges previously made to your specified payment method will be reversed.

B. **Applicable Taxes:** Unless you provide Clairvoyant with a correct and valid tax exemption certificate, you are responsible for sales and other taxes that apply to your order.

C. **Shipping, Title and Risk of Loss:** Title to Items and risk of loss pass to you when the Items are delivered to a shipping carrier.

1) If the shipping carrier provides tracking information and you have access to that information, you are encouraged to track the progress of the shipment and to be available to receive the shipment upon arrival at the location you specified.

2) You are responsible to inspect the packaging, upon receipt, and immediately notify the shipping carrier of any visible damage.

3) You are encouraged to take advantage of additional security measures that might be offered by the shipping carrier. For example: (i) signature required for delivery; (ii) ship to one of the shipping carrier's locations, where the package is held for you to pick up at that location; or (iii) schedule a delivery window where someone will be present at the delivery location you specified and able to accept delivery.

4) Also, some shipping carriers will provide minimum levels of insurance for each package delivery. If an insured package was not received, you should notify the shipper and file a claim.

D. **Pricing, Product Availability:** Pricing, offers to sell, promotions and inventory levels are subject to change. Every effort is made to present accurate and current information; however, errors may occur. In the rare case that an error impacts you and your order, Clairvoyant reserves the right to cancel an order or contact you for instructions on how you would like to move forward. If an order is canceled, you will be contacted.

E. **Payment**

1) When you create a purchase on theoracare.com by adding Items to your cart, you will be directed to a third-party ecommerce shopping cart provider ("Cart Provider") that processes your shopping cart and your payment. If you purchase

directly from Clairvoyant, using offers to purchase (such as a purchase order), Clairvoyant will either (i) process your purchase through the Cart Provider or (ii) process your request directly through its own account.

2) Subscription fees (recurring fees for services) are also handled through the Cart Provider and payments may be processed in a reasonable time in advance of the applicable subscription billing period.

3) By providing payment information, you authorize the stated amount to be processed as either an electronic debit or fund transfer or electronic draft from your designated payment source.

4) If any charge is returned unpaid or if any credit card or similar transaction is rejected or denied, Clairvoyant or the Cart Provider reserve the right to collect applicable payment rejection or insufficient funds fees and to process any such payment as an electronic payment that is authorized under these Terms.

5) If You believe that you have been charged in error, You should contact Clairvoyant within 90 days of such charge. No refunds will be given for any charges more than 90 days old. Clairvoyant reserves the right to issue refunds or credits at its sole discretion. If Clairvoyant issues a refund or credit, Clairvoyant is under no obligation to issue the same or similar refund in the future. This refund policy does not affect any statutory rights that may apply.

4. Warranty & Liability

A. Theora warranties are set out in the Theora Terms and Conditions, which applies to the use of Theora Devices, services, or components. Those warranty Terms, provisions and exclusions are incorporated into this document. For Items that are not Theora products, the manufacturer's warranty will apply, and Clairvoyant offers no additional warranty on those Items.

B. Liability, Indemnity

1) CLAIRVOYANT WILL NOT BE LIABLE (A) FOR INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (B) FOR ANY MATTER BEYOND CLAIRVOYANT'S REASONABLE CONTROL, EVEN IF CLAIRVOYANT HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING LOSSES OR DAMAGES; (C) FOR PHYSICAL ATTACKS OR CYBER-ATTACKS UPON CLAIRVOYANT OR ITS NETWORK OR THE NETWORKS OR FACILITIES OF THIRD-PARTY SUPPLIERS; OR (D) IF RESULTING FROM SOME FORM OF TECHNOLOGY ATTACK BY A THIRD PARTY, THE BREACH OF OR LOSS OF PRIVACY OF E-MAIL ADDRESSES, REGISTRATION AND IDENTIFICATION INFORMATION, DISK SPACE, COMMUNICATIONS, CONFIDENTIAL OR TRADE-SECRET INFORMATION, OR ANY OTHER CONTENT STORED ON CLAIRVOYANT'S EQUIPMENT, TRANSMITTED OVER NETWORKS ACCESSED BY CLAIRVOYANT, OR OTHERWISE CONNECTED WITH THE USE OF ITEMS OFFERED FOR SALE BY CLAIRVOYANT.

2) UNLESS SPECIFICALLY STATED IN WRITING, CLAIRVOYANT SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESS.

3) CLAIRVOYANT SPECIFICALLY DISCLAIMS ANY AND ALL LIABILITY AND WARRANTIES, IMPLIED OR EXPRESS FOR USES REQUIRING FAIL-SAFE PERFORMANCE OR FOR USES WHERE FAILURE COULD LEAD TO PERSONAL INJURY OR DEATH. FOR EXAMPLE, THIS DISCLAIMER APPLIES TO, BUT IS NOT LIMITED TO, SOLUTIONS INVOLVING LIFE SUPPORT, MEDICAL DEVICES, OR HEALTH-RELATED MONITORING. THEORA COMPONENTS ARE NOT DESIGNED FOR AND SHOULD NOT BE USED IN ANY OF THESE OR OTHER FAIL-SAFE APPLICATIONS

4) You agree to defend, indemnify, and hold harmless Clairvoyant against and in respect of any claims, loss, damages, obligations, penalty, deficiency, or liability (including, without limitation, attorneys' fees) imposed upon, incurred by or asserted against Clairvoyant that result from or are related to Your breach of these Terms or an alleged violation of law.

5) You acknowledge that a governmental entity may (a) intercept Your data or (b) require Clairvoyant to disclose Your data or information.

6) It is understood and agreed that, regardless of the way liability is asserted or adjudged, Clairvoyant's liability will not exceed the aggregate amount of your purchase. The limitations and exclusions apply to the maximum extent permitted by applicable law. The stated price is a consideration in limiting Clairvoyant's liability. No action, regardless of form, arising out of these Terms may be brought by You more than one year after the cause of action has accrued.

5. Intellectual Property

A. You acknowledge that, unless expressly stated, Clairvoyant retains all rights in its trademarks, service marks, software, technology, and any other Items of intellectual property.

B. Items may not be reverse engineered, decompiled, or modified, nor may derivative works be created, without the prior written consent of Clairvoyant.

C. Unsolicited Ideas. Clairvoyant does not solicit proposals or ideas, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements (collectively "Unsolicited Ideas").

If You send Unsolicited Ideas to Clairvoyant:

1) You grant all right, title and interest in the Unsolicited Ideas to Clairvoyant. This grant is royalty-free, fully paid-up, perpetual, irrevocable, transferable, and unlimited.

- 2) You acknowledge and agree that Clairvoyant will not be under any obligation of confidentiality with respect to the Unsolicited Ideas.
 - 3) You represent and warrant that (i) the Unsolicited Ideas do not contain confidential, health-related, or proprietary information of You or of a third party; and (ii) Clairvoyant is under no obligation, to compensate or reimburse You for any reason or action related to the Unsolicited Ideas.
6. Dispute Resolution, Binding Arbitration and Class Action Waiver: If a dispute should arise between the parties:
- A. 60-day negotiation period. If a dispute arises, the parties will first attempt to resolve any disputes by negotiation. No dispute may be submitted to arbitration or to a court until 60 days after the parties first begin good faith efforts to resolve the dispute by negotiations.
 - B. Arbitration: If the dispute cannot be resolved by negotiation, the dispute will be resolved by binding arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"). The parties agree not to seek resolution by bringing suit in court in front of a judge or jury. Instead, a single, neutral arbitrator will hear the dispute. The arbitrator's decision will be final except for a limited right of review under the FAA. Class action lawsuits, class-wide arbitrations, private attorney-general actions, and other similar proceedings, where someone acts in a representative capacity, are not allowed.
 - C. Exceptions to arbitration agreement.
 - 1) Notwithstanding the foregoing, in the event of an actual or anticipated violation of these Terms by You, You agree that Clairvoyant will be entitled to apply for injunctive remedies (or an equivalent type of legal relief).
 - 2) If a claim would fall within the jurisdiction of a small claims court, You and Clairvoyant agree to waive the arbitration provision in these Terms, and the dispute may be submitted to an appropriate small claims court sitting in Travis County Texas.
 - D. Any claim, regardless of where and how it is submitted, must be filed within one year from the time the claim arose; otherwise, it is permanently barred.
 - E. If You (i) improperly file a claim and (ii) Clairvoyant has notified You in writing that the filing is improper and (iii) You have failed to withdraw the claim, Clairvoyant may recover its attorneys' fees and costs incurred in responding to and defending against the improperly filed claim.
 - F. For purposes of jurisdiction, Your data is presumed to have resided or to have been transmitted within the State of Texas.
 - G. In the event a dispute should be filled for judicial resolution, even if filed in a manner that is in conflict with these Terms, each party consents to the exclusive jurisdiction and venue of the courts residing in Travis County, Texas. Clairvoyant's consent to jurisdiction and venue will not serve as a waiver of the dispute resolution provisions of these Terms. This subsection should not be interpreted as a waiver of the provisions in this section 6.
7. GENERAL PROVISIONS:
- A. Complete Agreement: These Terms contain the complete and exclusive agreement between the parties and supersedes all prior or contemporaneous written or oral communications between the parties relating to the subject matter hereof.
 - B. Assignment: Neither party may assign its rights or obligations under these Terms without the express written consent of the other, which consent will not be unreasonably withheld. This paragraph will not apply if all, or substantially all, of a party's assets are being sold to a third party and the rights and all obligations of the Terms are being transferred to that third party.
 - C. Relationship Of The Parties: Each party is an independent entity and has no power, right or authority to bind the other or to assume or to create any obligation or responsibility, express or implied, on behalf of the other.
 - D. Governing Law. These Terms, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to these Terms, or the negotiation, execution or performance of these Terms (including any claim or cause of action based upon, arising out of or related to any representation or warranty), will be governed by, and enforced in accordance with, the laws of the State of Texas, including its statutes of limitation, but without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Texas.
 - E. Force Majeure: Neither party will be liable for a failure or delay in performing an obligation under these Terms, where such failure or delay is caused by: (i) circumstances beyond its reasonable control (an "Event"); (ii) that could not have reasonably been anticipated; and (iii) that could not have reasonably been avoided or overcome. The term "Event" may include, without limitation: breakdown of communication facilities, damage or unavailability of data stored with a third-party vendor, natural catastrophes, extreme weather conditions, governmental acts or omissions or orders, changes in laws or regulations, accident, riots, war (declared or not), terrorist act, epidemic, pandemic, quarantine, civil commotion, labor disruptions, fire, disruptions in shipping or transport, lack of availability of raw materials, or extended disruption in utility

or Internet services. For the avoidance of doubt, force majeure Events do not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder. Upon the occurrence of an Event, the affected party will notify the other party. Upon request, the affected party will provide details regarding each Event and the steps being taken to remedy any failure of or delay in performance of obligations.

F. The fact that Clairvoyant has not acted to enforce or exercise any provision of these Terms, or any related right, will not constitute a waiver of that provision or right.

G. If a court of competent jurisdiction finds any provision of these Terms, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to affect the intent of the parties as reflected by that provision, and the remainder of these Terms will continue in full force and effect.

H. Notices: Any required or permitted notice must be in writing and may be sent: (i) by mail, with proof of delivery; (ii) by commercial delivery, with proof of delivery; or (iii) by email, with a return acknowledgment, sent by recipient.

I. Materials that are acquired by or on behalf of the United States of America, its agencies, and/or agents ("U.S. Government"), are subject to the provisions of FAR 12.211 - "Technical Data", and FAR 12.212 - "Computer software" or to clauses providing equivalent protections in DFARS or other agency specific regulations.

J. Effect of Termination: Provisions that by their nature are intended to survive the termination of these Terms will survive termination notwithstanding the cause of termination. Such provisions that are intended to survive include, without limitation, those that relate to indemnification, warranty, liability, and any limits thereon, proprietary rights and trade secrets, confidentiality of information, and payments due.

K. Export Laws. You must comply with all domestic and international export laws and regulations, which include restrictions on destinations, end users, and end use.

L. The United Nations Convention on Contracts for the International Sale of goods will not apply.