

FAQ: 31027 WHAT ARE THE TERMS OF COMM ONE'S STANDARD LICENSE AGREEMENT?

The information in this article applies to:
All Comm One Software

LICENSE AGREEMENT

Please read the following terms and conditions carefully before opening the program diskette package. Opening the Package indicates your acceptance of these terms and conditions. This agreement is a legal contract between the purchaser of this software package (Purchaser) and Comm One, Inc. If you do not agree with these terms, you may promptly return the package unopened. A restocking fee of 15% will be charged on returns of unopened packages made after 10 days from the date of purchase. No returns will be accepted after 30 days from the date of purchase. In exchange for payment of a one-time fee for this program, the Purchaser is hereby granted a license from Comm One, Inc. to use this program subject to the following terms and conditions:

1. The Purchaser is hereby granted a limited license to use this program on a single machine or on a single networked group of machines which share a common disk drive on which the program is stored, provided the program is stored only on the shared disk drive and is not also stored on a disk drive independent of the networked machines.
2. The Purchaser may transfer the program or any portions of the program into any machine or storage media for backup or modification purposes only in support of Purchaser's use of the program on the single machine or networked group of machines. Any portions of this program will continue to be subject to the terms and conditions of this license agreement.
3. The Purchaser may transfer the program and license granted herein to another party (transferee) if the transferee agrees to accept the terms and conditions of this agreement, except as provided below. Upon such transfer the term Purchaser as used herein shall refer to the transferee. If such a transfer occurs, the Purchaser's license shall automatically terminate and the Purchaser agrees at the same time to either transfer all copies of the program in any form to the transferee or destroy any copies not transferred, including all modifications and portions of the program contained or incorporated into other programs by any means, including but not limited to translation or compilation. Failure to notify Comm One, Inc. of such transfer within thirty (30) days of the transfer will void all further warranties, obligations of technical support, and the right to receive updates with regard to the program.
4. Purchaser hereby agrees not to transfer, or authorize the transfer of, the possession of any copy of the program by rental, lease, or lending, or by any other activity or practice in the nature of rental, lease or lending for the purpose of direct or indirect commercial advantage without the prior written authorization of Comm One, Inc.
5. The Purchaser agrees to reproduce and include the copyright notice on any copy, compilation, translation, modification, or portion of the program. The Purchaser may not use, copy, modify, translate, compile, or transfer the program, or any copy, modification, or merged portion in whole or in part, except as expressly provided for in this license.

6. Compilation of the source code of any Comm One, Inc. program by the Purchaser does not release the Purchaser from the terms and conditions of this agreement, nor does it allow the distribution of copies of any compilation of the source code. The program may be compiled and used on a machine that would otherwise be used to operate the source code version of the program (ie. a copy of the program must be purchased for each machine the program or any compilation of the program is to be used on.) Compilations of Comm One, Inc. source code may be copied for archive purposes only.

7. The license granted herein shall remain in effect until terminated as set forth in this agreement. Failure to comply with any conditions of this agreement will result in the immediate termination of the license granted by this agreement. The license granted herein may also be terminated at any time by destroying the program and all copies, portions and modifications thereof.

8. Comm One will replace any defective diskettes that are returned within 30 days of the original date of purchase. Comm One, Inc. warrants the program to operate substantially as specified in the accompanying documentation for a period of 90 days from the date of original purchase. By opening the sealed package, Purchaser agrees that the only remedy available to Purchaser will be the replacement of defective diskettes or the correction of any defects submitted in writing as defined above. No warranty, whether expressed or implied shall apply following the expiration of the 90 day period from the date of original purchase. The Purchaser shall be entitled to the benefit of said warranty only if the enclosed product registration card is returned to Comm One, Inc. within thirty (30) days of the original date of purchase.

9. THE WARRANTIES SET FORTH IN PARAGRAPH 8. ABOVE ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROGRAM. IN NO EVENT WILL Comm One, Inc. BE LIABLE FOR DAMAGES, INCLUDING ANY LOSS OF PROFITS, LOST SAVINGS, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF, OR INABILITY TO USE THE PROGRAM, EVEN IF Comm One, Inc. OR ITS AUTHORIZED REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Comm One, Inc. WILL NOT BE LIABLE FOR ANY SUCH CLAIM BY ANY OTHER PARTY.

10. In the event that program diskettes become lost or damaged, replacement diskettes may be obtained from Comm One, Inc. Replacement disks will only be provided if the product registration card is returned to Comm One, Inc. within thirty (30) days of the original date of purchase. The fee for replacement disks is \$25.00 (twenty-five dollars) plus \$7.00 for shipping and handling.

11. This limited warranty gives the Purchaser specific legal rights, and the Purchaser may have other rights which may vary from state to state. Some states do not allow limitations on how long an implied warranty lasts and some states do not allow the exclusion of limitation of incidental or consequential damages for consumer products. Some of the above limitations and exclusions may not apply to the purchaser depending upon residence.

12. If any provision of this agreement shall be held unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions of this Agreement.

13a. Purchaser understands that all programming modifications and changes made to any Comm One, Inc. software products by Comm One, Inc. will be provided under the following terms and conditions:

13b. Purchaser understands that the amounts to be billed by Comm One for such programming do not cover the entire development cost of the additional programming to be provided by Comm One. The costs billed only cover the basic cost of incorporating changes into the Comm One Software that will better suit the needs of the Purchaser. Accordingly, the purchaser understand and agrees that all right, title, and interest in and to all computer programming which is performed by Comm One, and all computer programs which result from such programming, shall remain the exclusive property of Comm One. The Purchaser shall only be entitled to a non-exclusive license to use such computer programs subject to the terms of the this licensing agreement. In particular, the Purchaser agrees that Comm One shall retain all copyrights in and to all computer programs produced, and that such computer programs are not works made for hire as that term is defined under U.S. Copyright Laws.

Comm One, Inc. and the purchaser agree that there may be other software products that the Purchaser would like to develop that are not already developed or under development by Comm One, Inc. Those works may not be covered by this licensing agreement. Such works, if any, will be identified as not being covered by this agreement in writing BEFORE programming or development by Comm One, Inc. begins. All software development or programming requested by Purchaser that is not specifically designated in writing as 'work for hire' as defined here before programming development begins, shall remain the property of Comm One, Inc. and shall be subject to the terms of this license agreement. Otherwise, ownership of copyrights, licensing, and any royalties due will be negotiated and determined in writing before any programming or development begins.

14. Comm One reserves the right to insert a cut-off switch in the software which will shut the system off if it is not paid for within 30 days of purchase. Once the system is paid for in full, the cut-off switch will be removed from the system. The purchase agrees to allow Comm One to insert the cut-off switch, and agrees that Comm One has the right to shut off the system after 30 days if it is not paid for in full.

15. The forgoing statements constitute the complete and exclusive agreement between Comm One, Inc. and the Purchaser and supersede any prior agreement in any form, written or oral, and any other communications relating to the subject matter of this agreement. This agreement will be governed by the laws of the State of Utah. The purchaser acknowledges by opening the package that he or she has read this agreement, understands it, and agrees to be bound by its terms and conditions.

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