

Terms of Use

BUILDERCMS.COM

TERMS OF USE

IMPORTANT! READ THIS ENTIRE AGREEMENT CAREFULLY.

THESE ARE THE TERMS AND CONDITIONS GOVERNING YOUR USE OF THE BUILDERCMS.COM WEBSITE AND OUR SERVICES.

Welcome to the Buildercms.Com Web site (the "**Site**")! The contents of this Web site, including without limitation the CMS service and other services Community Management Systems provides on or through this Web site (collectively, the "**Services**"), are owned and operated by Community Management Systems, LLC. (CMS) and its licensors and provided to you subject to these Terms and Conditions of Use (this "**Agreement**").

This Agreement shall apply to all of the Services, unless otherwise expressly provided in additional terms and conditions provided as part of any other agreement you may enter into with providers of third party services offered on this Site. This Agreement may also be supplemented with other guidelines or rules applicable to and posted on specific areas of this Site, which guidelines or rules are hereby incorporated into this Agreement by this reference.

IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS THE SITE OR USE THE SERVICES. USE OF THIS SITE CONSTITUTES IMPLICIT ACCEPTANCE OF THESE TERMS.

1. Description of Services

CMS's Services include Internet based software that combines and integrates all facets of the residential construction process into one system at an affordable monthly cost. The Services enable users to manage multiple homebuilding projects by linking all parties in the building process together through the Internet. The Services also enable users to integrate various offline (or online) accounting system software packages as well as supply chain disintermediation.

2. Our Privacy Policy

We respect your privacy. We will never use, distribute, or sell data stored on our web site. Information that we collect via this Web site is subject to our privacy policy then in effect.

3. We Reserve the Right to Revise this Agreement

We reserve the right to revise this Agreement, including the Additional Terms and Conditions of Use, at any time, by posting such revisions to this Site. Your continued use of this Site following such notice will be deemed to conclusively demonstrate your acceptance of this Agreement as revised. If you object to this Agreement (or any subsequent modifications) or become dissatisfied with any of the Services, your only recourse is to discontinue use and to notify us of termination.

4. We May Revise or Terminate Any Part of the Services at Any Time and Add New Services or Promotions

We reserve the right, at any time and in our sole discretion, with or without notice, to: (1) modify or discontinue, temporarily or permanently, this Web site or any of the Services, in whole or part; (2)

terminate or suspend your password, account (or any part thereof), or your use of any of the Services, or (3) remove any content within any of the Services. We shall have no liability to you or to any third party for any of these actions.

5. Acceptable Use of the Services. In order to use the Services, you must obtain access to the World Wide Web directly or through devices that access web-based content and pay any and all service fees associated with such access, and abide by the following terms and conditions.

a. Individual Use. You may freely visit this Site, but may retain only a single copy of pages of this Site solely for your own individual use. You agree that you shall not otherwise duplicate, download, publish, modify or distribute any material from this Site unless otherwise expressly authorized by Community Management Systems. We post legal notices and various credits on pages of the Site, which you may not remove even from your permitted copy.

b. Deep Links. You shall not "deep-link" to this Site, meaning that you will not create, post, display, publish or distribute any link to any page other than the front (home) page of this Site for any purpose, unless expressly authorized, in writing, by Community Management Systems to do so.

c. Security, Cracking and Hacking. You shall not violate or attempt to violate the security of the Services. Accordingly, you shall not: (i) access data or materials not intended for you; (ii) log into a server or account which you are not authorized to access; (iii) attempt to probe, scan or test the vulnerability of a system or network or to tamper, hack, crack, modify or otherwise corrupt, circumvent or breach security, authentication, rights management or other access control measures without proper authorization; (iv) attempt to interfere with or deny service to any user, host or network, including without limitation, via means of submitting a virus to the Services, overloading, "flooding," "mailbombing," any "denial of service attack" or intentionally "crashing" the Services; (v) attempt to circumvent or alter the methods or processes Community Management Systems uses to measure time, bandwidth utilization, or other methods to account for or document "use" of any of the Services; or (vi) execute any form of unauthorized network monitoring (e.g., packet sniffing) to intercept data not intended for your use or access, or in any way interfere with, intercept or expropriate any system, data or information. Violations of system or network security may result in civil or criminal liability. Community Management Systems reserves the right to investigate occurrences which may involve such violations and may involve, and cooperate with, law enforcement authorities in prosecuting users who have participated in such violations. You understand that data and communications, including e-mail and other electronic communications, may be accessed by unauthorized third parties when communicated over the Internet. You agree that it is your responsibility, and not Community Management Systems', to obtain and use third party software products that support encryption and other security protocols compatible with such protocols (if any) as may be used by Community Management Systems from time to time in connection with the Services.

d. You Are Responsible For All of Your Activities and All of The Content You Post. You represent and warrant that any information you post or provide to Community Management Systems by means of this Site, including, without limitation, as part of any registration or application or to gain access to any Services, is truthful, accurate, not misleading and offered in good faith. Any information disclosed to you via the Services including, without limitation, any content in the personalized areas of the Site, may be used only for its intended purpose. Community Management Systems expects that you will exercise caution, good sense and proper judgment in using the Services. You agree NOT to use the Services for or in connection with any of the following activities:

i) Spoofing or otherwise impersonating any person or entity, including, without limitation, any other users or any of Community Management Systems' personnel, or falsely stating or otherwise misrepresenting your identity or affiliation in any way, or forging any TCP/IP packet header or any part of the header information in any e-mail or other posting;

ii) Any fraudulent or illegal purpose;

iii) E-mailing, uploading, or otherwise transmitting or using the Services in furtherance of the use or distribution of any unlawful, harmful, harassing, defamatory, tortuous, libelous, abusive, threatening, vulgar, sexually explicit, obscene, hateful, racially, ethnically or otherwise objectionable material of any kind, or any material that is invasive of another's privacy or exploits children, or transmitting any sexually explicit materials, including images and other content;

iv) Transmitting material that contains viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines or engines that are intended to damage, destroy, disrupt or otherwise impair a computer's functionality or the operation of Community Management Systems' Services (or anyone else's), detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information, or transmit any materials that otherwise violate Community Management Systems' rules or policies;

v) Engaging in illegal gambling operations;

vi) Engaging in or encouraging conduct that would constitute fraud or any other criminal offense or give rise to civil liability;

vii) Engaging in deceptive on-line marketing;

viii) Violating any applicable local, state, national, or international law, ordinance or regulation, including without limitation laws governing financial services, export control, gambling or money laundering;

ix) Engaging in any fraudulent or illegal purpose, or any use which violates the accepted norms of the Internet community, whether or not expressly mentioned in this Agreement, or any activity that could damage the reputation of or the good will associated with Community Management Systems or any of its products or the Services, or the reputation and good will of its vendors and customers; or

x) Assisting or permitting any persons in engaging in any of the activities described above.

e. Do Not Violate Third Party Intellectual Property Rights. You may not use any of the Services to infringe on the intellectual property rights of others, including without limitation to make copies of or distribute intellectual property without permission of the owner or in violation of law. Without limiting the foregoing, you may not, and by using the Services you agree not to, use the Services to: (i) transmit material that is copyrighted, unless you are the copyright owner or have obtained the permission of the copyright owner to transmit it; (ii) transmit material that reveals trade secrets, unless you own them or have the permission of the owner to so transmit them; or (iii) transmit material that infringes on any Intellectual Property Rights (as defined below) of others or violates the privacy or rights of publicity of others. For purposes of this Agreement, the term "Intellectual Property Rights" means collectively, rights under patent, trademark, copyright and trade secret laws, and any other intellectual property or proprietary rights recognized in any country or jurisdiction worldwide, including, without limitation, moral rights and similar rights. Accordingly, you agree that Community Management Systems is neither responsible nor liable to you or any third party for any files you post, copy or modify by your use of the Services, regardless of the purpose of such posting. Nonetheless, if we reasonably believe that any user of the Services repeatedly uses the Services to infringe rights under copyright, we will terminate the account of that user. IT IS YOUR SOLE RESPONSIBILITY TO USE THE SERVICES IN COMPLIANCE WITH ALL APPLICABLE INTELLECTUAL PROPERTY RIGHTS AND LAWS.

f. Ownership. All content and materials on the Site including, without limitation, text, graphics, logos, button icons, images, audio clips, and software included in the Services, are the property of Community Management Systems or its licensors and are protected by U.S. and international copyright, trademarks and other proprietary rights and Intellectual Property Rights laws. The compilation of all content on this Site is the exclusive property of Community Management Systems and is protected by U.S. and international copyright laws. All software used on this Site is the property of Community Management

Systems or its licensors and protected by U.S. and international copyright laws. Except to the minimum extent otherwise expressly permitted under copyright law, no copying or exploitation of material from the Services is permitted without the express written permission of Community Management Systems and any other applicable copyright owner. You also may not resell the Services (or any part thereof). You acknowledge that you do not acquire any ownership rights by virtue of downloading copyrighted material from the Services. All rights not expressly granted hereunder are expressly reserved to Community Management.

g. Spidering. The use of any tools, programs, robotic algorithms or products to automatically download or "spider" the site or any of the pages of this Site is prohibited. Do not use any such tools or products on or in connection with the services!

h. Termination. Community Management Systems may and will terminate your service immediately, if, in its sole discretion, Community Management Systems believes that your conduct fails to conform with this Section 5 (Acceptable Use of the Services) or this Agreement. Without limiting the foregoing, if you use, or attempt to use the Services for any purposes other than its intended purposes (including without limitation by tampering, hacking, modifying or otherwise corrupting the security or functionality of the Services), you may also be subject to civil and criminal liability.

6. Compliance with Laws. You may use the Services only for lawful purposes. The Services are subject to, and you agree that you shall at all times comply with, all applicable local, state, national, and international laws, regulations and the like applicable to the use of the Services. This obligation includes your agreement to comply with all applicable laws and rules relating to the export of technical and other data from the United States (and from your country if you are not located in the United States) and your agreement not to export or re-export any such data or any other content or materials in violation of such laws, rules or regulations without first obtaining all necessary licenses, consents and approvals therefore, as well as authorization therefore from Community Management Systems.

7. Your Access to Certain Services. As a convenience and courtesy to you, in addition to the Services offered to the general user of the Site, Community Management Systems provides access to the CMS Services. You acknowledge that your electronic submissions constitute your agreement and intent to be bound by the agreements into which you thereby enter. Pursuant to any applicable statutes, regulations, rules, ordinances or other laws, including without limitation the Electronic Signatures in Global and National Commerce Act, P.L. 106-229 (the "E-Sign Act") or other similar statutes, YOU HEREBY AGREE TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, APPLICATIONS AND OTHER RECORDS AND ELECTRONIC DELIVERY OF NOTICES, POLICIES AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED THROUGH THIS SITE. Further, you hereby waive any rights or requirements under any statutes, regulations, rules, ordinances or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by other than electronic means. In addition, you understand that certain Services on the Site such as a general contents page and a current information page (which provides information that may include, without limitation, news of interest to users of this Site, shipper information and other Services) may include materials and information from third parties, and you acknowledge and agree that, other than inputting and formatting such information on the site, Community Management Systems has no control over such information. Accordingly, Community Management Systems cannot guarantee, represent or warrant that the content contained in the Site is accurate, appropriate to you, and/or inoffensive.

8. Community Management Systems Makes No Warranties. YOU UNDERSTAND AND AGREE THAT THIS WEB SITE AND THE SERVICES ARE PROVIDED STRICTLY "AS IS" AND "AS AVAILABLE", WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. COMMUNITY MANAGEMENT SYSTEMS DOES NOT WARRANT THAT THIS WEB SITE OR ANY OF THE SERVICES WILL BE AVAILABLE OR OPERATE IN ANY UNINTERRUPTED OR ERROR-FREE MANNER OR THAT ERRORS OR DEFECTS WILL BE CORRECTED. IN ADDITION, COMMUNITY

MANAGEMENT SYSTEMS DOES NOT WARRANT THAT ANY SERVICES OR MATERIALS AVAILABLE ON OR THROUGH THIS WEB SITE ARE APPROPRIATE OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION, AND ACCESSING THEM FROM JURISDICTIONS WHERE SUCH SERVICES OR MATERIALS ARE ILLEGAL IS EXPRESSLY PROHIBITED.APPLICABLE.

9. Limitation of Liability. YOU EXPRESSLY UNDERSTAND AND AGREE THAT COMMUNITY MANAGEMENT SYSTEMS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE USE OF THE SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF COMMUNITY MANAGEMENT SYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). TO THE EXTENT THE FOREGOING LIMITATION OF LIABILITY IS, IN WHOLE OR IN PART, HELD TO BE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF COMMUNITY MANAGEMENT SYSTEMS FOR ANY REASON AND UPON ANY CAUSE OF ACTION (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, STRICT LIABILITY AND OTHER ACTIONS IN CONTRACT OR TORT) ARISING OUT OF OR IN ANY WAY RELATED TO THE SITE OR THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED UP TO TWO HUNDRED FIFTY DOLLARS (\$250).

THE LIMITATION OF LIABILITY HEREIN APPLIES TO ALL LIABILITIES IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM YOUR USE OR YOUR INABILITY TO USE THE SITE, OR ANY OTHER MATTER ARISING FROM OR RELATING TO THE SITE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

10. Indemnity of Community Management Systems. You agree to indemnify and hold us harmless, and, at our request, to defend us from and against any claim, demand, cause of action, debt, loss or liability, including reasonable attorneys' fees, to the extent that such action is based upon, arises out of, or relates to your use of (or inability to use) the Services or any other activities of yours accomplished using the Services.

11. Order of Precedence. This Agreement governs your use of the Site and access to the Services. This Agreement does not modify, alter or amend any other agreement you have entered or will enter into with Community Management Systems or any of its related or affiliated entities. To the extent that any provision of this Agreement, or any supplemental agreement offered as any part of any registration for additional Services on this Site, conflicts with any provision of your other agreements with Community Management Systems or any of its related or affiliated entities, the terms of such other agreement, shall, as to the subject matter of that other agreement, take precedence over the conflicting term(s) of this Agreement. Accordingly, Additional Terms and Conditions of Use and any contract with a third party, such as an outside service provider shall, as to its subject matter, in all cases be binding, take precedence, govern and/or limit any conflicting terms in this Agreement.

12. Waiver and Release

YOU AGREE THAT COMMUNITY MANAGEMENT SYSTEMS (AND OUR OFFICERS, DIRECTORS, AGENTS, SUBSIDIARIES AND EMPLOYEES) SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGE OF ANY SORT INCURRED AS THE RESULT OF ANY DEALINGS BETWEEN YOU AND ANY THIRD PARTY, INCLUDING, WITHOUT LIMITATION, ANY SERVICE PROVIDERS. YOU HEREBY AGREE TO WAIVE ALL LAWS THAT MAY LIMIT ANY SUCH RELEASES. IF YOU ARE A RESIDENT OF CALIFORNIA, YOU SPECIFICALLY AGREE TO WAIVE THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him must have materially affected his settlement with the debtor."

13. Dispute Resolution Between You and Us. Any controversy or claim arising out of or relating to this Agreement or its breach, or otherwise relating to this Web site or any of the Services (with the exception of actions initiated by third parties or injunctive relief we seek for any violation of our or our licensors' or suppliers' proprietary rights, including but not limited to trademark or other intellectual property rights), shall be settled by arbitration in accordance with the then-current rules of the American Arbitration Association. Before entering into arbitration, the parties shall each appoint an arbitrator, and these two arbitrators shall select a third arbitrator to be a member of the panel. Should the two arbitrators not be able to agree on a choice of the third, then the American Arbitration Association shall make the appointment of a person who is neutral to the parties. None of the arbitrators shall be an officer, employee or family member of the parties to this Agreement. Such arbitrators shall be experts in the computer/information technology field, at least one of whom shall be an attorney. The location of arbitration shall be in Palm Beach County, Florida, USA. The arbitrator will issue a reasoned award. The parties may take discovery by any means allowed by the Federal Rules of Evidence then in effect. The arbitrator may exclude from evidence any evidence not previously shared with the other side. The cost of any arbitration or litigation will be borne equally by the parties pending the court's and/or arbitrator's award(s). The prevailing party in any arbitration proceeding or litigation hereunder will be entitled, in addition to any other relief granted to it, to recover reasonable attorney's fees and the costs incurred in connection with the arbitration or litigation.

14. General Provisions

This Agreement is governed by the laws of the State of Florida. With respect to disputes not subject to arbitration pursuant to the terms of Section 13 and with respect to any efforts by Community Management Systems to enforce an arbitration award against you, you agree to submit to the exclusive jurisdiction of courts in Florida. If any provision of this document is held by a court of competent jurisdiction to be contrary to law, then that provision shall be construed so as to reflect, to the maximum extent possible, the intentions of the parties with other provisions remaining in full force and effect. Our failure to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision unless acknowledged and agreed to by us in writing. You agree that any lawsuit or arbitration arising out of or related to this Web site or the Services must begin within one (1) year after the cause of action first arose; otherwise, such cause of action is permanently barred. This Agreement constitutes the entire agreement and understanding between you and us with respect to its subject matter and may not be contradicted by evidence of any prior or contemporaneous oral or written agreement. The section headings used in this Agreement are for convenience only and have no legal or contractual effect. We shall have no responsibility or liability for any delays or failures to perform arising from or related to any delay or failure beyond our reasonable control.

Without limiting the foregoing, Community Management Systems' Services at the CMS Site are not intended for use by or availability to minors. IF YOU ARE NOT LEGALLY AN ADULT UNDER THE LAW WHERE YOU LIVE OR IF YOU ARE UNDER 13 YEARS OF AGE, YOU MAY NOT ACCESS THE SITE OR USE THE SERVICES. IF SO, PLEASE IMMEDIATELY DISCONTINUE USE OF THE SERVICES AND DO NOT ACCESS THE SITE.