

Sierra Chart License Agreement

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INTRODUCTION AND AGREEMENT

Sierra Chart with an address of 30 N. Gould St. Suite #4261, Sheridan, WY, 82801, USA. Offers charting and trading software, operates the Sierra Chart website, and operates related or supplied market data, software and information, and trading gateways, and order routing and risk management services, referred to herein as “SOFTWARE, INFORMATION, AND SERVICES.”

By installing, accessing or using our SOFTWARE, INFORMATION, AND SERVICES, you agree to, and are bound by, these Terms of Use (the “Terms” or “Agreement”). This Agreement applies to anyone who installs, uses, accesses SOFTWARE, INFORMATION, AND SERVICES, regardless of how obtained or accessed. THESE TERMS ARE A LEGAL CONTRACT BETWEEN YOU AND SIERRA CHART.

We reserve the right to modify, amend, or change the Terms at any time. Notice of any material change will be posted on this page with an updated effective date. You are responsible for regularly checking this page for notice of any changes. Your continued use of Services constitutes your acceptance of any change, and you will be legally bound by the updated Terms. If you do not accept a change to the terms, you should stop using our Services immediately.

Sierra Chart may immediately terminate these Terms or any Services at any time for any reason.

"END-USER" and "You" refers to any user of the SOFTWARE, INFORMATION, AND SERVICES.

OWNERSHIP OF SOFTWARE AND LICENSE

The Sierra Chart software you are installing is the property of the developer, Sierra Chart (SC). Subject to your compliance with these Terms, Sierra Chart grants you a limited, non-exclusive, non-sublicensable, revocable, non-transferable license to use the software according to the terms in this contract and that were specified when you set up your account and when you obtained usage time.

LIMITS ON LIABILITY AND DISCLAIMER OF WARRANTIES

Sierra Chart works hard to provide the best SOFTWARE, INFORMATION, AND SERVICES, however, the Services are provided "as is", and Sierra Chart makes no guarantees that they will always be safe, secure or error-free, or that they will function without disruptions, delays or imperfections. To the extent permitted by law, Sierra Chart DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

SIERRA CHART DOES NOT GUARANTEE THE QUALITY, SUITABILITY, SAFETY OR ABILITY OF THIRD-PARTY PROVIDERS. YOU AGREE THAT THE ENTIRE RISK ARISING OUT OF YOUR USE OF THE SERVICES, AND ANY SERVICE OR GOOD REQUESTED OR OBTAINED FROM THIRD-PARTY PROVIDERS IN CONNECTION THEREWITH, REMAINS SOLELY WITH YOU.

SIERRA CHART DOES NOT CONTROL, MANAGE OR DIRECT ANY THIRD-PARTY PROVIDERS. THIRD-PARTY PROVIDERS ARE NOT ACTUAL AGENTS, APPARENT AGENTS, OSTENSIBLE AGENTS, OR EMPLOYEES OF SIERRA CHART.

SIERRA CHART DOES NOT CONTROL, ENDORSE OR TAKE RESPONSIBILITY FOR ANY USER CONTENT OR THIRD-PARTY CONTENT AVAILABLE ON OR LINKED TO BY THE SERVICES. SIERRA CHART CANNOT AND DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR SERVERS ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

Limitation of Liability.

SIERRA CHART SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, PERSONAL INJURY, OR PROPERTY DAMAGE RELATED TO, IN CONNECTION WITH, OR OTHERWISE RESULTING FROM ANY USE OF THE SERVICES.

Waiver of Jury Trial. YOU HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS AGREEMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY YOU AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

Arbitration. Any dispute arising among the parties hereto which the parties themselves cannot resolve after good faith negotiation shall be resolved through arbitration conducted in accordance with then applicable Commercial Arbitration Rules promulgated by the Judicial Arbitration and Mediation Services ("JAMS") instead of pursuing litigation. The arbitration shall be conducted in Wyoming, U.S.A. Within ten (10) days after demand for arbitration is made by either party, the parties shall agree on the selection of one (1) arbitrator. If they are unable to agree on an arbitrator, then JAMS shall select the arbitrator. Except as may otherwise be agreed in writing by the parties or as ordered by the arbitrator upon substantial justification shown, the hearing for the dispute shall be held within thirty (30) days of submission of the dispute to arbitration. The arbitrator shall render a final award within thirty (30) days following conclusion of the hearing. The arbitration award shall not be appealable and shall be final and binding on the parties. Final judgment may be entered upon such an award in any court of competent jurisdiction. Each party shall bear its own expenses of arbitration and the arbitrator's fee shall be split one-half jointly and severally among the Buyers and one-half jointly and severally among the Sellers,

unless the arbitrator shall separately award or allocate such fees and expenses.

Indemnity.

You agree to indemnify and hold Sierra Chart and its affiliates and their officers, directors, employees, and agents harmless from and against any and all actions, claims, demands, losses, liabilities, costs, damages, and expenses (including attorneys' fees), arising out of or in connection with: (i) your use of the Services or services or goods obtained through your use of the Services; (ii) your breach or violation of any of these Terms; (iii) Sierra Chart's use of your user content; or (iv) your violation of the rights of any third party, including Third-Party Providers.

WARRANTY

Sierra Chart is designed to be a reliable and accurate program. However, the SOFTWARE, INFORMATION, AND SERVICES is provided "AS IS" WITHOUT warranty of any kind. NO warranty is provided for the SOFTWARE, INFORMATION, AND SERVICES as to accuracy, as to reliability, as to the suitability for a particular purpose, as to financial results, as to the accuracy or reliability of the trading interface or components within the SOFTWARE, INFORMATION, AND SERVICES, or any other kind of warranty. If you encounter a technical problem, report this to Sierra Chart support. Sierra Chart will make a good faith effort to resolve the problem so long as it is within SC's control. Trading services, Data services, or operating systems that Sierra Chart may interact with are not within SC's control. Therefore, no promise is made that SC will be able to correct the problem. In no event shall the maximum remedy exceed the price paid for the software minus any stated service charges. Refunds must be requested within the stated time period [described here](#).

DATA LICENSE

Data included with Sierra Chart software subscriptions, Data provided by or accessed with Sierra Chart, and website information and data is provided for your own personal use. Under no circumstances shall it be redistributed in any form to others. The data is provided "AS IS" without warranty of any kind.

TRADING INFORMATION

Sierra Chart may use order activity data from the Teton order routing service to create composite and aggregated analytics for the Sierra Chart user base using Teton order routing. This information is not associated with any particular trading account, it is anonymous and aggregated. To opt out, inform Sierra Chart of your trading account identifier.

THIRD PARTY COMPLIANCE

Customer agrees to comply with all Subscriber Agreements, Exchange Rules, and other regulations for any third party with which the Customer performs interactions as part of the use of the Sierra Chart software. Any use of the Sierra Chart software that results in additional fees or penalties levied by a third party, whether through inherent capabilities of the system or through willful misuse, will be paid by the customer to the appropriate party, and in no way is the payment of any of these fees or penalties the responsibility of Sierra Chart. Should Sierra Chart receive information from a third party regarding any

non-compliance with the agreed upon rules, then the notification will be forwarded to the Sierra Chart customer, and the notifying body will be informed of such, in order for the notifying body to interact directly with the customer.

If you are using the CQG service within Sierra Chart and using provided market data from CQG, then your contract is with CQG for market data.

Explanation of No Liability

Sierra Chart is not responsible for any type of losses that you incur, whether the claim is brought under contract or tort law, arising out of the use of Sierra Chart, out of the use of any trading service used with Sierra Chart, or market data service used with Sierra Chart, or any failure or inability to use any of these services or software.

Reasons why, Sierra Chart is not responsible for any losses:

If you unexpectedly, incurred a profit when using Sierra Chart when you encountered a problem no matter what the cause of the problem, which is often an external service issue, Sierra Chart is not given that profit.

Sierra Chart receives a small monthly payment for its services. As a matter of contract law, at most we would only be liable for the refund of that payment, for the current month.

Sierra Chart has no control over the degree of trading and risk that you are taking. If you are taking a risk which results in a loss of 200 USD, and yet you only pay 20 USD for the software in a month, your loss is out of proportion for what you have paid with Sierra Chart. Sierra Chart has no control over what you are doing with it or any of the external services. Sierra Chart is simply not liable for what you are doing with the Sierra Chart software or any provided services. And you also need to understand in many cases you are using externally provided services which we have no control over in any way.

You have a duty to mitigate losses by taking the appropriate and immediate action to minimize those losses. If you do not take the appropriate actions, Sierra Chart support cannot be held responsible by your failure to promptly and immediately mitigate a situation which may arise in a loss. However, even if you do take prompt action to mitigate your loss, still Sierra Chart is not liable for the other reasons explained within this section.

You have a duty to understand what you are doing, and understand and verify your positions and orders and any other parameters of your trading. If something does not make sense to you, you have a duty to stop what you are doing, and remedy that situation to get into a stable and known state. This may mean contacting your broker by telephone or using other means, to understand the trading situation and bring it under control. For additional details, refer to [Procedure to Handle Unexpected Trading Issue](#).

If you thought you were trading when Sierra Chart was in Trade Simulation Mode and it was not and you incurred a real loss, then it is very important to pay attention to the order confirmations which indicate whether a trade is simulated or Live and other indicators as well within Sierra Chart related to this. We never recommend disabling order confirmations and they are on by default. Only you can disable order confirmations. Additionally, refer to [Difference Between Simulated and Non-Simulated Modes](#).

Use Auto-Liquidation at Your Own Risk

The limitations on liability and disclaimer of warranties above apply to use of Auto-liquidation Functionality. Further, Sierra Chart in this section states risks associated with the use of Auto-liquidation Functionality and for Auto-liquidation Functionality restates the limitations on liability and disclaimer of warranties.

Sierra Chart provides software used in the financial trading industry. Sierra Chart provides products to customers as part of its Teton Order and Risk Management product and that product includes Auto-liquidation Functionality. Sierra Chart does not charge customers anything for use of Auto-liquidation Functionality.

The Auto-liquidation Functionality provides the functionality where when a preset daily loss limit based upon either a fixed currency value, or a percentage of the net liquidating value of the account has been reached as the result of the cumulative loss of closed trades during the trading day and open positions profit or loss, then all working orders are automatically canceled, and all open positions are closed. After this operation it is no longer possible to establish new positions until the next trading day.

Auto-liquidation Functionality is a feature configured by your broker or clearing firm on your trading account. It is a feature running as a separate service which Sierra Chart connects when using the Teton order routing service. This service may go by a different name than Teton.

Sierra Chart believes there are elements that are out of anyone's control that may cause Auto-liquidation Functionality to malfunction and cause financial losses or not prevent financial losses, and that therefore Auto-liquidation Functionality should not be used without continuous monitoring. Among the possible issues:

1. Hardware system time can be set incorrectly causing the market data to appear delayed, which causes auto liquidation functionality not to function.
2. There can be a failure with the market data feed, causing the open profit/loss not to update which can cause auto liquidation functionality to not function when expected.
3. There can be a problem in the symbol settings with the tick size or currency value per tick causing the profit/loss calculations to be incorrect which can cause an erroneous triggering or no triggering at all.
4. A broker or clearing firm could incorrectly set the account balance, and when auto liquidation is based upon a percentage of account balance, the calculated daily loss limit, can be incorrect causing an erroneous triggering or no triggering at all.
5. This function can at most trigger only once per day per trade account.
6. A broker or clearing firm could incorrectly set the daily loss limit causing an erroneous triggering or no triggering at all.
7. There can be faulty data in the market data feed, including an incorrect price multiplier setting for the symbol causing an incorrect profit/loss calculation causing erroneous triggering or no triggering at all.
8. The Sierra Chart/Teton Order routing system can have incorrect position quantities for an account. Therefore, when auto liquidation is triggered, these incorrect positions would be closed. However, in effect new positions are created in the market for the trade account.

9. There can be system and (or) network level issues preventing the functionality from operating.
10. Commission settings set for the symbols being traded for the trade account, may not be set or may not be set correctly by the clearing firm. This can result in the auto liquidation not triggering at all or triggering at a daily net profit/loss, which is different than the true daily net profit/loss for the account.
11. There can be other unknown reasons for auto liquidation to not function or erroneously trigger.

Despite these issues with Auto-liquidation Functionality which have been disclosed by the Sierra Chart, END-USER still desires to use Auto-liquidation Functionality because END-USER believes Auto-liquidation Functionality may be beneficial to END-USER's trading.

END-USER recognizes that any use it makes of Auto-liquidation Functionality is undertaken with full knowledge and understanding of the issues and warnings provided by Sierra Chart regarding its use. Accordingly, END-USER agrees that Sierra Chart should be released from any liability or loss of any kind arising in connection with END-USER's use of Auto-liquidation Functionality.

Sierra Chart clearly advises END-USER, that Auto-Liquidation functionality only be used when continuously monitored and supervised. So that appropriate steps can be taken by the END-USER in the case of a malfunction.

END-USER agrees that they will monitor their trading account, and if Auto Liquidation does not trigger when expected or triggers when it was not expected to trigger, that they (END-USER) will take the appropriate steps to remedy this condition.

In consideration of the foregoing and in further consideration of the representations and covenants contained herein, and in consideration of Sierra Chart providing Auto-liquidation Functionality despite its stated concerns about the use of Auto-liquidation Functionality (and free of charge), and intending to be legally bound, the parties agree as follows:

Full and General Release of Liability. Along with the limitations of liability and disclaimer of warranties stated above, You, on behalf of yourself and each and all of your agents, employees, members, managers, affiliates, successors and assigns, and all other persons claiming through or under you, or who could have claimed through or under it (collectively, the "Releasors") hereby forever waives, releases and forever discharges Sierra Chart and each and all of its related companies, agents, employees, members, managers, affiliates, successors and assigns, and all persons who could have liability through or under Sierra Chart (collectively, the "Releasees") from any and all liability, actions, claims, demands, or lawsuits which the Releasors may have had, presently has, or in the future may have against Releasees and arising out of services or inability to use services, acts, or omissions related, in whole or in part, directly or indirectly, to Auto-liquidation Functionality. This Release applies to any and all claims against Releasees, currently known or unknown, arising under contract or under federal, state, or local statutory or common law (including civil tort law), or under the statutory or common law of any country or subdivision thereof world-wide, which have been asserted or which could have been asserted.

*Last modified Wednesday, 04th May, 2022.

