

# TSItouch Standard Terms and Conditions

## General:

Acceptance of purchase order or contract can only be made by TSItouch LLC. corporate headquarters located in the State of Pennsylvania, U.S.A. Acceptance of goods shipped is expressly made conditional on consent to the terms and conditions herein stated. These terms supersede any other document, including terms of a customer's purchase order, unless agreed to in writing and signed by an officer of TSItouch LLC, hereinafter referred to as TSItouch.

## 1. Governing Law; Forum Selection.

All orders shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, U.S.A., without regard to principles of conflicts of law. Manufacture, shipment and delivery are subject to any prohibition, restriction, priority allocation regulation, or condition imposed by or on behalf of the United States of America or any other governmental body with appropriate jurisdiction which may prevent or interfere with fulfillment of any order. TSItouch and Buyer hereby irrevocably submit to the jurisdiction of the Court of Common Pleas of Fayette County Pennsylvania in any action or proceeding arising out of or related to any order, and each party hereby irrevocably agrees that all claims in respect to such action or proceeding shall be heard and determined in such District Court.

## 2. Prices

The following terms apply unless otherwise agreed in writing by TSItouch.

- a) Unless specifically stated otherwise, quotations expire 30 days after the date of the quotation.
- b) Prices are exclusive of use, sales, value added and other taxes including duty taxes for international sales. When applicable, such taxes will appear as a separate item on TSItouch's invoice. Customer will pay such taxes unless Customer has provided TSItouch with a resale exemption certificate in the appropriate form for the jurisdiction of Customer's place of business and any jurisdiction to which product is to be directly shipped.
- c) Prices are exclusive of shipping and handling charges, unless such charges have been specified and included in the quoted price when applicable, such shipping and handling charges will appear as a separate item on TSItouch's invoice. If no transportation method is provided, TSItouch will ship by best way freight as determined by TSItouch.

## 3. Payment and Security Terms

- a) Payment terms are subject to credit approval by TSItouch. Customer must fill out and return a signed copy of TSItouch's credit application form before initial credit terms not to exceed \$20,000.00 (twenty thousand dollars) will be granted. Customers approved for credit will pay invoices within 30 days from the date of invoice and a service charge of 1 1/2% per month will be charged on all past due invoices. A \$25 (twenty-five dollar) handling fee will be charged on checks returned for insufficient funds. TSItouch reserves the right to change these credit terms at any time when, in TSItouch's opinion, Customer's financial condition or previous payment record so warrants.
- b) Should Customer fail to pay any sum when due TSItouch or fail to perform any other provision of any agreement with TSItouch, TSItouch will not be obligated to continue performance under any agreement with Customer.
- c) Credit card payments are subject to a 4% credit card processing fee.
- d) The customer agrees that should this account be turned over for collection, customer will pay all collection fees and legal fees incurred, in addition to any unpaid balance due TSItouch.
- e) International Customers must prepay with wire transfer the total order amount prior to shipment.

- f) If the shipment date, or delivery schedule listed in the contract changes at no fault to TSItouch, TSItouch will have the option to invoice based on the originally scheduled delivery dates.

## 4. Delivery Dates

- a) Delivery is subject to TSItouch product availability at the time Customer's order is received. TSItouch will make every responsible effort to meet delivery dates quoted or acknowledged, but will not be liable for failure to meet such dates.

## 5. Delays in Performance

- a) TSItouch will not be liable for delays in performance or for non-performance due to unforeseen circumstances or beyond its reasonable control.

## 6. Shipment, Risk of Loss and Packing

- a) Unless otherwise specified shipping terms are FOB Shipping Point
- b) Shipping costs will be calculated from the TSItouch facility and thereafter, to the receiving dock of the Customer.
- c) TSItouch will pack for shipment and storage and will ship in accordance with standard commercial practice. Customer may specify packing or shipping instructions subject to agreement by TSItouch. Any additional charges for shipments moving under Customer's instructions will be freight prepaid and added to TSItouch's invoice.
- d) Title to products and risk of loss and damage will pass to Customer when the product leaves TSItouch's shipping dock.
- e) If Customer drop ships equipment to TSItouch's facility, risk of loss and damage will be the Customers. TSItouch only insures equipment they hold title to; therefore, it is the Customer's responsibility to request additional insurance for their equipment. Any additional charges will be prepaid and added to TSItouch invoice.

## 7. Changes and Cancellations

- a) If Customer issues a change order causing a delivery delay or cancels an order less than 60 days prior to scheduled shipment, Customer will be subject to up to a 25% charge based upon the list purchase price of the products. In addition, any change in delivery dates caused by Customer establishing a delivery date greater than 3 months from Customer's original delivery date will constitute a new order for the affected products in determining the appropriate price
- b) If Customer cancels an order for custom products or services, customer may be subject to a charge of an amount up to 100% of the amount of the order amount. Custom products or services are TSItouch manufactured or configured to Customer's unique requirements.

## 8. Returns and Upgrades

- a) If Customer receives authorization from TSItouch to return a product for credit, Customer will receive the applicable credit and may be subject to a charge of up to 25% of the list purchase price or \$50.00, whichever is greater.
- b) No returns will be accepted for custom products or services.
- c) For upgrades involving replacement of parts or systems, Customer transfers ownership of removed parts or systems to TSItouch, and Customer will return the removed parts or systems within 30 days of delivery of the upgrade. If Customer is not the owner of the product being upgraded, Customer will obtain permission of the owner and any lien holders to install the upgrade and transfer ownership of removed parts or systems to TSItouch.

## 9. Acceptance of Products

- a) Acceptance will occur at the Customer delivery site when the Customer verifies that the hardware, systems or software are received. If written notification is not received within 10 days, customer will be deemed to have accepted the products free of shipping damage and in good working order.

## 10. Intellectual Property

- a) "Intellectual Property rights" means patents, copyrights, mask works, industrial designs, utility models, and trademarks. "Claim" means demand, administrative proceeding, or suit in law or equity.
- b) If anyone alleges in a claim against Customer that any product furnished hereunder infringes any intellectual property rights in the country in which Customer takes delivery, TSItouch will defend the claim at its expense provided Customer gives TSItouch prompt written notice of the claim, grants TSItouch sole authority to defend the claim, and cooperates with TSItouch in defending the claim.
- c) If the product was furnished hereunder for purposes of resale, any person to whom Customer resells the product will have the same rights and obligations as Customer as to any claim of infringement of intellectual property rights in the country in which such person takes delivery.
- d) In defending the claim, TSItouch may settle on whatever terms it wishes. If use of the product is enjoined under any final award or settlement, TSItouch at its option and expense will either: procure the right to continue using the product, replace the product with a non-infringing product, modify the product so it becomes non-infringing, or take back the product and refund the depreciated value.
- e) TSItouch is not liable for defending or paying any claim of infringement arising from either: TSItouch compliance with any designs, specifications or instructions of Customer; modification of the product; use of the product in a way not specified in TSItouch publications; or use of the product with products not supplied by TSItouch when such products are not supplied by TSItouch are the cause of the infringement.
- f) TSItouch is and shall remain the sole and exclusive owner of any and all rights in any intellectual property created, designed, or conceived by TSItouch in connection with or arising out of the work performed by TSItouch. TSItouch grants Customer only a limited, nonexclusive, royalty-free license to use the intellectual property embodied in any product or system provided, supplied or sold by TSItouch as necessary for Customer to use such product or system. Nothing in any development agreement or otherwise shall be construed as vesting in or transferring to customer any intellectual property rights.
- g) The foregoing states the entire liability of TSItouch for infringement of intellectual property rights or other proprietary rights by products furnished hereunder.

## 11. Copyrighted Materials

- a) Unless otherwise agreed in writing by TSItouch, copyrighted materials (e.g., software, firmware), with the exception of manuals, drawings, printed documentation, may not be copied except for archival purposes, to replace a defective copy, or for program error verification.

## 12. Licensed Products

- a) For the purposes of these TSItouch Terms and Conditions of Sale and Service, the following definitions apply:
  - 1) "Software" means one or more programs capable of operating on a computer, processor or controller and either separately priced as a software product or included with another product sold by TSItouch.
  - 2) "Firmware" means one or more programs incorporated in a product sold by TSItouch and fixed in hardware or other non-volatile memory.
  - 3) "Use" means storing, loading, installing, executing or displaying programs on a computer, processor or controller.
- b) Customer's license confers no title or ownership in the software or firmware and no rights in any associated source code and will not be construed as a sale of any rights in software or firmware.
- c) TSItouch grants to Customer a non-exclusive license(s) in software in accordance with TSItouch's then current Software License Agreement Terms.
- d) TSItouch grants to Customer a license to use firmware only in conjunction with the operation of the associated TSItouch hardware product in the configuration in which that product is sold by TSItouch or subsequently upgraded by TSItouch.
- e) Customer's license to use firmware is subject to the following restrictions:

- 1) Customer may not disassemble or decompile in any part of the firmware unless TSItouch's prior written consent is either obtained or not required by law.
- 2) Customer may not adapt, modify or copy firmware except as an essential step in the use of the firmware.
- 3) Customer may transfer firmware only upon a transfer of its entire interest in the firmware and license in the firmware together with a transfer of the associated hardware product.

### **13. Monitor Functionality**

- a) Addition of touch overlay may degrade or prohibit the use of display remote control capabilities.

### **14. Warranty**

TSItouch warrants its manufactured hardware products and replacement parts against defects in materials and workmanship. Unless stated otherwise, the warranty period is three years\* from order delivery. Unless stated otherwise, all products not manufactured by TSItouch are sold solely with the manufacturer's warranty. TSItouch will, when requested to do so, assist customer in getting defective hardware repaired. If TSItouch receives notice of such defects during the warranty period, TSItouch will, at its option, repair or replace the defective hardware products or replacement parts which prove to be defective. Some newly manufactured products purchased hereunder may contain selected remanufactured parts equivalent to new in performance. Replacement parts are new or equivalent to new.

TSItouch warrants that its software and firmware products designated by TSItouch for use with a hardware product, when properly installed, will not fail to execute their programming instructions due to defects in materials and workmanship. If TSItouch receives notice of such defects during the warranty period, TSItouch will, at its option, repair or replace the defective hardware, software media or firmware. TSItouch does not warrant that operation of software, firmware or hardware will be uninterrupted or error free. If a TSItouch Product or System repair requires re-certification or re-accreditation, TSItouch shall not be liable for obtaining it.

\* Monitors carry a three year warranty. Touch screen warranty varies by manufacture. Unless specified in the TSItouch quote, touch screen warranty is one year. Consumer monitors are not warranted by TSItouch.

THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESS OR IMPLIED. TSITOUCH SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **15. Limitation of Remedies and Liability**

- a) TSItouch will not be liable for bodily injury, death or property damage to the extent that any TSItouch product or service sold hereunder is determined by a court of competent jurisdiction to be defective and to have directly caused such bodily injury or death, property damage.
- b) TSItouch and its suppliers shall not be liable to Customer or to any third party for any claims for incidental, special, indirect, or consequential damages, including loss of profit, plant, equipment, data or production, arising from the sale, license, purchase, resale, repair or use of a Product or from any promise or offer to sell, purchases, ships or repair a product.

THE REMEDIES PROVIDED HEREIN ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT WILL TSITOUCH OR ITS SUBCONTRACTORS BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS), HOWEVER BASED.

## 16. Support

- a) TSItouch offers telephone and email support services from Monday through Friday (less US holidays) from 0800 to 1600 Eastern Standard Time for TSItouch-provided hardware and software products.
- b) Products must be in normal operating condition and at current specified revision levels to be eligible for support. Work performed by TSItouch to meet those requirements is subject to TSItouch's standard service rates.
- c) TSItouch may, at no additional charge, make modifications to products to improve their operation and reliability or to comply with legal requirements.
- d) For any material breach of support services by TSItouch, Customer's remedy and TSItouch's liability will be limited to refund of support charges paid during the period of breach up to a maximum of 12 months for the products at issue.
- e) TSItouch provides support for qualified products. Hardware products and software not supplied or not approved by TSItouch and products for which Customer does not allow TSItouch to incorporate engineering improvements will be considered non-qualified products. Customer is responsible for removing non-qualified products to allow service of qualified products. If performance of services is made more difficult because of a non-qualified product, TSItouch will charge Customer for the increased efforts at TSItouch's standard service rates. Services do not include repairing damage to products caused by:
  - 1) Use of non-TSItouch media and supplies or such items not designed for use with the products;
  - 2) Site conditions that do not conform to TSItouch's specifications, or failures resulting from non-conformance with TSItouch's site specifications such as air conditioning failure or unusual electrical conditions; and
  - 3) accident, natural disasters, fire or water damage, neglect, improper use, acts of war, riots, strikes, lightning or electrical disturbances, damage during transportation by Customer, work performed or modification made by personnel other than TSItouch employees or subcontractors, or other causes beyond TSItouch's control.
- f) If on-site service is provided by TSItouch, Customer will:
  - 1) Be responsible for security of its proprietary and confidential information and for maintaining a procedure external to the products for reconstruction of lost or altered files, data or programs;
  - 2) Have a representative present at Customer's site at all times when services are being performed by TSItouch on site or by telephone; and
  - 3) Notify TSItouch if any product serviced is being used in an environment which poses a potential health hazard to TSItouch personnel (TSItouch may require such products to be maintained by Customer under TSItouch supervision).

## 17. Miscellaneous

- a) Except as may be prohibited by bankruptcy laws, in the event of any insolvency or inability to pay debts as they become due by a party hereto, or voluntary or involuntary bankruptcy proceeding by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may elect to cancel any unfulfilled obligations hereunder.
- b) Notices will be given in writing at the address of each party set forth in attachments hereto, or to such other address as either party may substitute by notice to the other. Notices are effective 10 days after date of notice.
- c) Neither party may assign any rights or obligations hereunder without the prior consent of the other.
- d) TSItouch's and/or customer's failure to exercise any of its rights hereunder will not constitute a waiver or forfeiture of such rights.
- e) No U.S. Government procurement regulations will be included hereunder and binding on either party unless specifically agreed in writing prior to incorporation herein.
- f) Stenographical, typographical and clerical errors are subject to correction.
- g) Any disputes arising in connection with these TSItouch Terms and Conditions of Sale and Service and any attachments will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. The Court of Common Pleas of Fayette County Pennsylvania shall have jurisdiction.
- h) If any action is brought by Customer to this sale against TSItouch regarding the sale of products hereof, TSItouch shall be entitled to receive, in addition to other relief granted, reasonable attorney fees and expenses of litigation.

- i) These TSItouch Terms and Conditions of Sale and Service and any attachments will constitute the entire agreement between the parties relating to transactions hereunder and supersede any previous communication, representation or agreement by either party whether oral or written. Customer's additional or different terms and conditions will not apply. Customer's purchase or License of products and services hereunder will constitute acceptance by Customer of these TSItouch Terms and Conditions of Sale and Service. No change of any of the terms and conditions herein will be valid unless in writing signed by an authorized representative of each party.

## **18. Export Control**

- a) Customer agrees to comply fully with all applicable United States export control laws.

