



TSItouch Standard Terms and Conditions

1. General. Acceptance of a purchase order or contract can only be made by TSItouch, Inc (“**TSItouch**”) at TSItouch’s corporate headquarters located in the Commonwealth of Pennsylvania, U.S.A. Acceptance of products shipped is expressly made conditional on consent to the Terms and Conditions herein stated (the “**Terms**”). These Terms, together with the attached Order Verification (“**Order Verification**”) and any information or documents incorporated herein by reference, contain the entire and exclusive agreement (“**Agreement**”). These Terms supersede any other document, including terms of Customer’s purchase order, unless agreed to in writing and signed by an officer of TSItouch and are the only terms which govern the purchase of the products (“**Products**”) and services (“**Services**”) from TSItouch. For purposes hereof, customer shall mean the Customer listed in the attached Order Verification (“**Customer**”).

2. Governing Law; Forum. All orders shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, U.S.A., without regard to any choice or conflict of law principles that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. 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 Customer 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.

3. 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, excise, and other taxes including duty taxes for international sales. When applicable, such taxes shall appear as a separate item on TSItouch’s invoice. Customer shall 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 shall appear as a separate item on TSItouch’s invoice. Customer shall be responsible for all such charges, costs, and taxes; provided that, Customer shall not be responsible for any taxes imposed on, or with respect to, TSItouch’s income, revenues, gross receipts, personnel or real or personal property or other assets. If no transportation method is provided, TSItouch shall ship by best way freight as determined by TSItouch.

(d) Customer shall purchase the Products from TSItouch at the prices set forth in TSItouch’s quotation.

4. Payment/Security Terms.

(a) Customer shall pay all invoiced amounts due to TSItouch within 30 days from the date of TSItouch’s invoice and Customer shall make all payments hereunder in US dollars. On all past due invoices, Customer shall be subject to a service charge the lesser of 1.5%, calculated daily and compounded monthly, or the highest rate permissible by applicable law. 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, as determined in TSItouch’s sole exclusive discretion, shall be granted. A \$25 handling fee shall 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) If Customer fails to pay any sum when due TSItouch or fail to perform any other provision of any agreement with TSItouch, TSItouch shall not be obligated to continue performance under any agreement with Customer.

(c) Credit card payments will be charged a 4% credit card processing fee.

(d) If Customer's account is turned over for collection, Customer shall pay all collection fees and legal fees incurred, in addition to any unpaid balance due to 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 Order Verification changes at no fault to TSItouch, TSItouch shall have the option to invoice based on the originally scheduled delivery dates.

(g) Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with TSItouch, whether relating to TSItouch's breach, bankruptcy or otherwise.

5. Delivery Dates. TSItouch shall make every responsible effort to meet delivery dates quoted or acknowledged but shall not be liable for failure to meet such dates or loss or damage during transit. Delivery is subject to TSItouch Product availability at the time Customer's order is received.

6. Delays. TSItouch shall not be liable for delays in performance or for non-performance due to unforeseen circumstances or beyond its reasonable control.

7. Shipment, Risk of Loss and Packing.

(a) Unless otherwise specified shipping terms are FCA shipping point.

(b) Shipping costs shall be calculated from the TSItouch facility and thereafter, to the receiving dock of Customer.

(c) TSItouch shall pack for shipment and storage and shall 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 shall be freight prepaid and added to TSItouch's invoice.

(d) Title to Products and risk of loss and damage shall pass to Customer when the Product leaves TSItouch's shipping dock.

(e) If Customer drop ships equipment to TSItouch's facility, Customer shall be responsible for risk of loss and damage.

8. Changes/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 shall 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 shall 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.

9. Returns/Upgrades.

- (a) If Customer receives authorization from TSItouch to return a Product for credit, Customer shall receive the applicable credit and may be subject to a charge of up to 25% of the list purchase price or \$50, whichever is greater.
- (b) No returns shall 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 shall 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 shall obtain permission of the owner and any lien holders to install the upgrade and transfer ownership of removed parts or systems to TSItouch.

10. Acceptance of Products.

- (a) Delivery. Upon carrier's delivery of Products to Customer, Customer shall immediately inspect the Products for damage resulting from transport while carrier is still present. If Customer discovers any damaged Products, Customer shall require carrier to (i) notate Customer's discovery on the Bill of Lading and (ii) sign the Bill of Lading, indicating the time and date. Customer shall obtain a copy of the Bill of Lading from the carrier that denotes Customer's discovery of such damage. If Customer has a claim, or intends to make a claim, against carrier, Customer shall notify TSItouch of the claim immediately and in any event no later than 10 business days after the delivery of the Product to Customer.
- (b) Customer shall inspect the hardware, systems or Software within 10 business days of receipt ("**Inspection Period**"). Customer shall be deemed to have accepted the hardware, systems or Software unless it notifies TSItouch in writing of any nonconforming hardware, systems or Software during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by TSItouch. "**Nonconforming Products**" shall mean only the following: (i) Product shipped is different than identified in the attached Order Verification; or (ii) Product's label or packaging incorrectly identifies its contents. Customer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt.
- (c) If Customer timely notifies TSItouch of any Nonconforming Products, TSItouch shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. TSItouch shall arrange shipping, at its sole expense and risk of loss, of Nonconforming Products to TSItouch's facility located at 1 Millennium Drive, #3, Uniontown, PA 15401. If TSItouch exercises its option to replace Nonconforming Products, TSItouch shall, after receiving Customer's shipment of Nonconforming Products, ship to Customer, at Customer's expense and risk of loss, the replaced hardware, systems or Software to the Delivery Point.
- (d) TSItouch may, in its sole discretion, without liability or penalty, make partial shipments to Customer. Each shipment shall constitute a separate sale, and Customer shall pay for the Products shipped whether such shipment is in whole or partial fulfillment of the attached Order Verification.
- (e) If for any reason Customer fails to accept delivery because TSItouch is unable to deliver Products because Customer has not provided appropriate instructions, documents, licenses, or authorizations: (i) the Products shall be deemed to have been delivered; and (ii) TSItouch, at its option, may store the Products until Customer picks them up, whereupon Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

11. Intellectual Property.

- (a) For the purposes hereof, the following definitions apply:

(1) “**Intellectual Property Rights**” means patents, copyrights, mask works, industrial designs, utility models, and trademarks.

(2) “**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, in TSItouch’s sole discretion may choose to; (i) 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, or (ii) grant a full refund to Customer and pay all shipping and handling fees associated with the return of the Product to TSItouch

(c) If the Product was furnished hereunder for purposes of resale, any person to whom Customer resells the Product shall 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 shall 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.

12. 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.

(b) For the purposes hereof, 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.

13. Monitor Functionality. Addition of touch overlay may degrade or prohibit the Use of display remote control capabilities including, without limitation, OEM functions, power-on indicators, ambient light sensors, and other monitor sensors.

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 shall, when requested to do so, assist Customer in getting defective hardware repaired. If TSItouch receives notice of such defects during the warranty period, TSItouch shall, 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, shall 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 shall, at its option, repair or replace the defective hardware, Software media or Firmware. TSItouch does not warrant that operation of Software, Firmware or hardware shall 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. EXCEPT FOR THE WARRANTY SET FORTH IN THIS SECTION 14, TSITOUCH MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION ANY (A) WARRANTY OF MERCHANTABILITY AND (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

15. Limitation of Remedies and Liability.

(a) TSItouch shall not be liable for bodily injury, death or property damage incurred by Customer pursuant to any TSItouch Product or Service sold hereunder arising from any claim, issue, or matter unless such claim, issue, or matter shall have been finally adjudicated by a court of competent jurisdiction, evidenced by a final non-appealable order, 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, exemplary, punitive, or consequential damages, including loss of profit, revenue, 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 regardless of whether such damages were foreseeable and whether or not TSItouch has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.. 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 sole remedy and TSItouch's liability shall 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 shall 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 shall 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 shall:

(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 shall 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. All notices shall be delivered by personal delivery, by a nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in any attachment hereto a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving notice has complied with the requirements of this section.

(c) Neither party may assign any rights or obligations hereunder without the prior consent of the other. This Agreement is for the sole benefit of the parties hereto and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

(d) TSItouch's and/or Customer's failure to exercise any of its rights hereunder shall not constitute a waiver or forfeiture of such rights. No single or partial exercise of any right, remedy, power or privilege arising herefrom operates, or may be construed, as a waiver thereof. No waiver by TSItouch of any of the provisions hereof is effective unless explicitly set forth in writing and signed by TSItouch.

(e) No U.S. Government procurement regulations shall 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 Terms and any attachments shall 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) Provisions of these Terms which by their nature should apply beyond their terms shall remain in force after any termination or expiration hereof including, without limitation, Confidential Information, Governing Law, Submission to Forum, and Survival.

(j) If any term or provision hereof is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision hereof or invalidate or render unenforceable such term or provision in any other jurisdiction. These Terms and any attachments shall 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 shall not apply. Customer's purchase or License of Products and Services hereunder shall constitute acceptance by Customer of these Terms. No change of any of the terms herein shall be valid unless in writing signed by an authorized representative of each party.

18. Export Control. Customer agrees to comply fully with all applicable United States export control laws.