

General Terms and Conditions for the sale of Products

Terms & Conditions

THIS AGREEMENT is made between:

- (1) TOUCHSTAR (registered in England with Registered Number 955977) whose registered office is at Maple Barn, Beeches Farm Road, Uckfield, East Sussex, TN22 5QD ("Feedback Data Limited"); and
- (2) THE COMPANY CORPORATION OR PARTNERSHIP whose particulars appears in the Order or stated on the signature page of this agreement ("Customer").

Operative Clauses

1. Interpretation
- 1.1 In this Agreement the following expressions have the following meanings unless inconsistent with the context:-
 - "Acceptance" acceptance of the Products in accordance with clause 7;
 - "Bespoke Software" custom made software developed at the customer's request;
 - "Delivery" either collection by the Customer from TouchStar or the delivery by TouchStar to the Customer (as appropriate);
 - "Event of Force Majeure" any event beyond the reasonable control of a party including but not limited to fires, strikes or lock outs, insurrection or riots, delays in transportation, inability to obtain supplies, supplier failure and the requirements or regulations of any civil or military authority;
 - "Fault" A material failure or malfunctioning of the Hardware;
 - "Hardware" the hardware and peripherals (which includes any operating software) described in the current Order;
 - "Intellectual Property" any and all patents, trade marks, copyrights and other intellectual property rights and all similar rights in the world;
 - "Licence" the licence to use the Standard Software set out in clause 4;
 - "Operating Manuals" the user reference guides usually supplied by TouchStar with the Products;
 - "Order" any Order from the Customer setting out the Products and Services to be supplied by TouchStar whether written, oral or otherwise;
 - "Part" A component of the Hardware;
 - "Products" Hardware or Software items to be supplied by TouchStar as detailed in the Order;
 - "Product Maintenance" support and maintenance of the Products by TouchStar on the TouchStar standard terms;
 - "Price" the price of the Products and Services (plus Value Added Tax at the rate prevailing from time to time) set out in the Order;
 - "Repair" Replace or repair the Part to remedy the Fault in the Hardware;
 - "Services" all tasks to be carried out by TouchStar under this Agreement as more particularly detailed in the Order;
 - "Site" the Customers site(s) specified in the Order;
 - "Software" the Standard Software and Bespoke Software detailed in the Order;
 - "Specification" the current description of each Product as detailed by TouchStar;
 - "Standard Rate" TouchStars' standard rates for Services (stated as a daily rate) and Software licences from time to time prevailing as detailed in the Order;
 - "Standard Software" packaged and licensed software which is supplied by TouchStar in machine executable form only and as detailed in the Order.

"TouchStar Intellectual Property" any and all Intellectual Property Rights and trade secrets, ideas, concepts, methodologies, techniques, templates, generic tools or codes, processes, software, routines, algorithms, expressions and data conceived, created developed or reduced to practice by TouchStar prior to or independent of its development of the Bespoke Software.

"User" a hand held computer with a monitor, a workstation, a terminal or any other equipment on or through which the Software can be operated or accessed; and

"Working Hours" Monday to Friday inclusive (excluding Bank and Public holidays in England) 8.30am to 5:00pm

2. Scope of Agreement
- 2.1 TouchStar agrees that in consideration of the payment of the Price by the Customer in accordance with this Agreement it will use its reasonable efforts to:-
 - 2.1.1 Procure and deliver to the Customer the Products; and
 - 2.1.2 Provide the Services.
- 2.2 Customer will provide TouchStar, promptly on request, with such assistance, access and facilities as TouchStar may reasonably require to enable it to carry out its obligations under this Agreement and Customer acknowledges that TouchStar shall not be liable for any delay caused by Customer's failure to perform such obligations with due expediency.
- 2.3 Time is not of the essence in relation to this Agreement although the parties will use their reasonable endeavours to adhere to any agreed project timetable.
- 2.4 TouchStar reserves the right at any time to make any improvement, substitution or modification in the Specification, design, manufacture or configuration of the Products provided that such improvement, substitution or modification shall not produce any significant detrimental downturn in the functionality or performance of the System.
- 2.5 For the avoidance of doubt, no Order is valid until accepted by TouchStar.
3. Delivery and Installation
- 3.1 Risk in the Products shall pass to the Customer on delivery but until TouchStar has received payment of the full price for the Hardware:
 - 3.1.1 Full legal and equitable title in the Hardware shall remain with TouchStar.
 - 3.1.2 TouchStar shall be entitled to require the Customer to return each such Hardware's to TouchStar or enter the premises of the Customer for the purpose of removing and to remove each such Hardware.
- 3.2 The Customer must insure any Hardware against all risks for its full cost from delivery to the Site until payment of the Price in full. Notwithstanding delivery the property in the Hardware shall remain with TouchStar and shall not pass to the Customer until TouchStar has received payment of the Price in full.
4. Licence of Standard Software
- 4.1 TouchStar now grants the Customer a non-exclusive, non-transferable right to use the Standard Software on approved hardware at the Site solely for its own internal business purposes in accordance with the other terms and conditions of this Agreement. Such Licence will continue indefinitely until terminated in accordance with this Agreement. Save as otherwise notified by TouchStar to the Customer this Licence shall be deemed to incorporate and include all future Standard Software which is supplied to the Customer by TouchStar from time to time.
- 4.2 The Licence entitles the Customer to make such copies of the Standard Software as are necessary for the Customer's own use (including without limitation for archive and backup purposes). In making copies the Customer will ensure that all copyright and proprietary notices contained on the original version of the Standard Software also appear on all copies made. The Customer will keep a written record of the whereabouts of all copies made and will allow TouchStar from time to time to verify the same.
- 4.3 Save as permitted by law the Customer shall have no right to reverse engineer, decompile, copy, adapt or modify the Standard Software.
- 4.4 The Licence granted shall only enable the Customer to permit employees and contractors to use the Software. Use shall be strictly limited to the

- number of Users set out in the Order (if any). Should the Customer require additional Users, the Customer has the right to extend the Licence in consideration for additional payments at TouchStar's then Standard Rates.
- 4.5 All Intellectual Property in the Standard Software and Operating Manuals shall (as between TouchStar and the Customer) at all times remain with TouchStar.
5. Maintenance
The Customer may elect to have the benefit of Product Maintenance on TouchStar's standard terms and at its Standard Rates.
6. Price and Payment
- 6.1 All appropriate parts of the Price are payable within 30 days of the date of invoice unless otherwise agreed.
- 6.1a For Pilot and Roll-out Projects a deposit of 50% of the Project value is required at the start of the Project. The balance is subject to invoice terms.
- 6.2 In addition to the Price, TouchStar reserves the right to charge the Customer for any and all travel, subsistence and delivery expenses reasonably incurred by TouchStar in its performance of this Agreement (such amounts to be invoiced monthly in arrears).
- 6.3 If the Customer fails to pay any monies due under or in connection with this Agreement then TouchStar shall be entitled (without prejudice to its other rights or remedies) to:-
- 6.3.1 Charge interest on the outstanding amount at the rate of three (3) per cent, per annum above the Barclays Bank base rate (as the same may vary from time to time) from the due date until the Price or outstanding part thereof is paid; and/or
- 6.3.2 Suspend performance of any obligation owed under this Agreement until such time as the outstanding payment is made; and/or
- 6.3.3 Suspend all of Customer's rights to use the Software under the license.
- 6.4 All payments to be made under this Agreement shall be made without any set-off or deduction.
7. Acceptance
- 7.1 The Customer will undertake Hardware and Standard Software inspection within the timescale indicated in any agreed project timetable (or if there is none within seven (7) days of delivery of the Hardware and Standard Software). The Customer will notify TouchStar in writing of any errors it discovers and of no errors are reported in the timescale set out above the Hardware and Standard Software shall be deemed to be accepted.
- 7.2 If the Product fails the inspection then TouchStar will use its reasonable endeavours to implement promptly such alterations or modifications to the Hardware and Standard Software as are required to ensure that the Hardware and Standard Software passes the inspection. The inspection will be re-run by the Customer as soon as practically possible thereafter (this procedure being repeated until Acceptance is achieved).
- 7.3 Bespoke Software will be tested against the specification it is generated from. When both parties agree that the Bespoke Software matches the specification then it is deemed as Accepted. TouchStar deems that the customer accepts the Bespoke Software by default after a period of 90 days from delivery of the Bespoke Software unless prior notification is received.
- 7.3 If the Customer puts the Product into use or any part, or module, of it in commercial operation before completion of the inspection (other than for inspection or training purposes), then such use shall be entirely at the Customer's own risk and shall be deemed to constitute Acceptance of the Product by the Customer for the purposes of this Agreement. Rejection of one Product shall not prevent the Acceptance of others.
8. Intellectual Property Rights
- 8.1 The Customer acknowledges that any Intellectual Property Rights used or embodied in or in connection with the Standard Software, TouchStar Intellectual Property and Hardware shall as between TouchStar and the Customer remain the sole property of TouchStar.
- 8.2 TouchStar agrees to protect and hold harmless and defend at its own expense the Customer from any and all claims of infringement of Intellectual Property Rights affecting the Product, provided that the Customer immediately notifies TouchStar of such a claim, does not make any admission of liability and hands conduct of the claim (and any related settlement negotiations) to TouchStar.
- 8.3 Subject at all times to TouchStar retaining all rights and title to the TouchStar Intellectual Property, TouchStar shall assign all its rights and title in any Bespoke Software to the Customer and shall execute on request all documents and do such acts as are necessary to complete such transfer.
- 8.4 In relation to TouchStar Intellectual Property that forms part of the Bespoke Software, TouchStar grants to the Customer for its internal business use a non-exclusive, non-transferable, worldwide, royalty free and perpetual licence to use the same.
9. Warranty
- 9.1 TouchStar warrants that:-
- 9.1.1 Hardware from Delivery will be free from any defect in material or workmanship for a period of twelve (12) months;
- 9.1.2 Bespoke Software for a period of ninety (90) days from delivery will possess the functionality set out in any agreed specification;
- 9.1.3 Standard Software for a period of twelve (12) months from Delivery will be free from any material defect in design and workmanship;
- 9.1.4 The Services will be performed with reasonable care and skill; and
- 9.1.5 The Hardware and Software shall be compatible with each other.
- 9.1.6 A Repaired Part will be free from any defect in material or workmanship for a period of three (3) months.
- 9.2 The Customer acknowledges that TouchStar does not warrant or represent that the operation of the Products will be uninterrupted or error free.
- 9.3 The warranties set out in clause 9.1 shall not apply to defects or failures which arise in whole or in part from accident neglect or misuse of the Hardware, failure of third party hardware or software, electrical power, equipment or circuitry outside the Products, unusual stress or storage, transportation, handling or repairing by the Customer or operation of the Products by employees of the Customer who are not properly trained.
- 9.4 The Customer will give notice to TouchStar as soon as it is reasonably able upon becoming aware of a breach of any warranty. TouchStar's sole liability and obligations in relation to a breach of warranty under clause 9.1 shall be at its option to remedy, repair or replace the Products (or the failing parts thereof.)
- 9.5 The warranties in clauses 9.1 are the only warranties given under this Agreement. Any other warranties, conditions, obligations or terms which are implied into this Agreement by statute, custom or at law (including, without limit, any warranties of fitness for purpose or relating to satisfactory quality) are excluded.
- 9.6 For the avoidance of doubt, TouchStar shall not be liable for any defect or damage caused as a result of user abuse, or misuse, as reasonably determined by TouchStar.
10. Termination and Post Termination Provisions
- 10.1 This Agreement may be terminated by notice in writing with immediate effect:-
- 10.1.1 By TouchStar if the Customer fails to pay any sum due under this Agreement within thirty (30) days of any due date;
- 10.1.2 By either party if the other commits a material breach of any term of this Agreement (other than one falling within clause 10.1.1 above) which (in the case of a breach capable of being remedied) has not been remedied within thirty (30) days of a written request to remedy the breach (and for these purposes it is agreed that lateness is a remediable breach); and
- 10.1.3 By either party if the other proposes a voluntary arrangement, suffers an insolvency event or any similar or analogous event occurs in relation to the other party in this or any other jurisdiction.
- 10.2 Upon termination of this Agreement for any reason the Licence shall terminate and the Customer shall immediately cease use of the Standard Software. The Customer shall immediately on such termination return to TouchStar all copies of the Standard Software, delete all stored copies and certify to TouchStar that no copies have been retained.
- 10.3 Upon termination of this Agreement for any reason any Hardware for which payment has not been received in full shall be returned to TouchStar.
- 10.4 Any termination of this Agreement under this clause 10 is without prejudice to any other rights or remedies a party may be entitled to under this Agreement or at law. It does not affect any accrued rights or liabilities of neither party nor any provision which is expressly or by implication intended to come into force on, or continue in force after, termination.
11. Liability
- 11.1 Each party's total liability under or in connection with this Agreement whether in contract, tort or otherwise will not in aggregate exceed the Price. The Customer acknowledges that this limitation is reasonable.
- 11.2 Neither party shall be liable for any claim for damage to, loss of or costs in respect of, any consequential or indirect loss including without limitation loss of profit, revenues, goodwill or business opportunities, loss of overheads, loss of management time, loss of data or any losses not following naturally and directly from the breach complained of.
- 11.3 Notwithstanding anything to the contrary in this Agreement each party's liability to the other:-
- 11.3.1 For death or personal injury caused by the negligence of the other, its employees, agents or sub-contractors.
- 11.3.2 Under Part 1 of the Consumer Protection Act 1987

- 11.3.3 Due to any breach by the other of conditions as to title or warranty as to quiet possession, or
- 11.3.4 For fraud (including without limit, fraudulent misrepresentation);

Shall not be limited (but nothing in this clause confers any right or remedy upon the other to which it would not otherwise be entitled).

12. Confidentiality

- 12.1 TouchStar and the Customer hereby undertake to each other to keep confidential any and all information concerning the business affairs of the other that it shall have obtained or received as a result of discussions and prior arrangements leading to this Agreement (and subsequently receive during the performance of this Agreement).
- 12.2 Neither party may disclose such information in whole or in part to any other person without the other's written consent, save those of its employees, agents and sub-contractors involved in the implementation and/or support of the Products.
- 12.3 Neither party shall use any information disclosed other than solely in connection with the implementation, operation or support of the Products.
- 12.4 The provisions of clauses 12.1 and 12.2 do not apply to information which is already in the public domain or which is known to the other party other than by breach of this Agreement.

13. Force Majeure

- 13.1 Neither party will be liable under this Agreement for any breach of its obligations resulting from an Event of Force Majeure. The party affected by an Event of Force Majeure agrees to give written notice to the other upon becoming aware of an Event of Force Majeure that notice containing details of the circumstances giving rise to the Event of Force Majeure.

14. Severability

If any provisions of this Agreement or any document made in connection with this Agreement is determined by any court, tribunal or administrative body of a competent jurisdiction to be wholly or partly unenforceable for any reason, that unenforceability shall not affect the rest of this Agreement, the unenforceable part being deemed severed and deleted and the remainder continuing in full force and effect.

15. Application of Terms

- 15.1 This Agreement shall apply to all Orders placed with TouchStar by the Customer, and shall override all previous contracts arrangements representations (other than fraudulent misrepresentations) whether express or implied, including but not limited to stipulations contained in the Customer's purchase order. No variations, additions or modifications to this Agreement will be binding on TouchStar unless accepted and confirmed in writing by a duly authorized representative of TouchStar or upon the Customer unless accepted and confirmed in writing by a duly authorised officer or partner of the Customer.
- 15.2 For the avoidance of doubt nothing in this agreement shall confer on any third party any benefit or the right to enforce any term of this agreement.

16. Waiver

The failure or delay by either party to exercise or enforce any of its rights or to enforce any obligation which the other party is in breach of under this Agreement is not a waiver of that right nor will it bar enforcement of that obligation (or any similar or other obligation) at that time or at any subsequent time.

17. Notices

- 17.1 Any notice or other document to be served under this Agreement must be in writing, and a notice or other document will be effectively served if served in the following ways (and shall be deemed to have been served at the times stated):-

- 17.1.1 By pre-paid recorded delivery post - on the second day after posting; or
- 17.1.2 By personal delivery - upon actual delivery or upon refusal to accept delivery.

- 17.2 Any notice or other document to be served under this Agreement shall be addressed to the recipient's address stated in this Agreement or any other address of which the recipient has notified the other party (or alternatively in the case of a company, to the registered office of that company).

18. Assignment

- 18.1 The Customer may not assign, transfer, mortgage, charge or otherwise dispose of or encumber this Agreement, or any of its rights or obligations under it, without the prior consent of TouchStar.
- 18.2 TouchStar may sub-contract any or all of its obligations under this Agreement, subject only to accepting the sub-contractor's acts as its own.
- 18.3 TouchStar may assign its rights and obligations under this Agreement without consent on giving written notice to the Customer.

19. Law

This Agreement is governed by and is to be construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English courts.