

TOUCH ONE SOLUTIONS LIMITED

TERMS AND CONDITIONS OF CONTRACT

1. DEFINITIONS

- 1.1 "Business Day" means any day other than a Saturday, Sunday, bank or public holiday within the United Kingdom.
- 1.2 "Change of Control" happens where in respect of any customer, that a person or body which controls that party ceases so to do so and another person or body acquires control of that party.
- 1.3 "Commencement Date" is the date specified as such in our quotation or scope of works.
- 1.4 "Confidential Information" means any confidential, commercial, financial, technical or other information or data relating to the disclosing party including, data, records, reports, agreements, software, programs, specifications, know-how, trade secrets and other information in any form or medium disclosed in writing, orally or by any other means to one party by the disclosing party or by a third party on behalf of the disclosing party.
- 1.5 "Deliverables" means the provision of any work, materials or outputs in any form produced and/or supplied by us, or on our behalf, to you as part of and identified in our quotation and scope of works.
- 1.6 "Downtime" means that percentage of time within a rolling 12 month period where our service is not available to you due to reasons within our reasonable control.
- 1.7 "DPA" means the Data Protection Act 1998.
- 1.8 "Due Date" means the date by which the value of any invoice we submit to you, including any applicable VAT or other taxes should have been paid to us by you.
- 1.9 "Fees" means the fees identified in the quotation.
- 1.10 "Force Majeure" means an event causing a delay in the performance, or non-performance by us, of our obligations under our Contract with you arising from acts or omissions beyond our reasonable control. A force majeure event shall include but not be limited to acts of God, fire, flood, earthquake, storm, other adverse weather condition or natural disaster, war, riots, insurrection, governmental or parliamentary prohibitions or enactments, import or export regulations, strikes, lock-outs, cessation of labour, trade disputes, destruction or shut-down of production facilities, shortage or curtailment, delay or disruption in transportation, difficulties in obtaining labour or materials, breakdowns or accidents, financial requirements or manufacturing limitation imposed by third-party manufacturers, suppliers or vendors.
- 1.11 "Hardware" means any third party hardware products to be provided by us to you under the contract.
- 1.12 "Hosted Services" means applications and data held on our equipment which is leased to you on a monthly, quarterly or yearly basis;
- 1.13 "Including" means including but not limited to;
- 1.14 "Intellectual Property Rights" means any rights of ownership including but not limited to copyrights, trademarks, patents, industrial design rights, trade secrets and/or such similar rights.
- 1.15 "ITPS" means any services, software, equipment and/or other information technology product which we have agreed to supply to you under our contract with you;
- 1.16 "Managed Services" means equipment owned by you and located at your site or our site which is maintained and configured by us and/or equipment owned by us and located at your or our sites which is maintained and configured by us;
- 1.17 "Order Acceptance Document" means a written communication from us to you on our standard form of acceptance detailing the basis on which we will provide the ITPS.
- 1.18 "Parties" means us and you as parties to the contract;

- 1.19“Scope of Works” means the works, identified within our quotation, to be provided under any contract that the parties enter into for the provision of ITPS by us to you;
- 1.20“Media” means the media upon which software is recorded and any associated documentation;
- 1.21“Software” means any third party software products/s to be provided by us to you under the contract;
- 1.22“Support Contracts” means an agreement made between you and us for us to provide support for your business ITPS equipment as detailed in our quotation and scope of works;
- 1.23“User Licence” means the end user licence agreement applying to the Software.
- 1.24“The Parties” means you and us.
- 1.25“Us” means Touch One Solutions Limited, a company incorporated in England Wales (registered number 7561923), whose registered office is at 9 Pond Close, Fernwood, Newark, Nottinghamshire NG24 3RU. In these terms and conditions, expressions such as “the company”, "we", "our" and "ours" shall mean Touch One Solutions Limited;
- 1.26“VAT” means value added tax chargeable at the rate prevailing at the date of our invoice/s;
- 1.27“Your” means the party (or nominated employees, sub-contractors or agents) with whom we enter/have entered into a contract for the provision of ITPS from us. In these terms and conditions, expressions such as “the client”, “your” and “yours” shall mean “you”;
- 1.28“Your Input” means any information, goods and works in any form or format whatsoever disclosed and/or provided to us by you for use by us in providing the ITPS.

2 GENERAL

- 2.1 Words used in the singular will be interpreted to include the plural and vice versa.
- 2.2 Other than as agreed between the parties within our order acceptance, any reference to communicating or the serving of information or any matter in writing will exclude email, and written will be interpreted accordingly.
- 2.3 In the event of any inconsistency or conflict between these terms and the provisions within the quotation, the quotation will take precedence over these terms and conditions.
- 2.4 Nothing written within your enquiry or our quotation will oblige us to enter into any contract for the provision of ITPS unless and until we have communicated our order acceptance to you on our standard form.
- 2.5 Other than where we have expressly agreed to the contrary, these terms and conditions, together with any amendments thereto as may be added or any amendments made from time to time, shall apply to any contract entered into between you and us to the exclusion of all others.
- 2.6 Formation of contract will take place upon delivery of our order acceptance to you.

3 IT PRODUCTS & SERVICES (ITPS)

- 3.1 We will use reasonable endeavours to provide the ITPS to you in an efficient and effective manner substantially in accordance with our quotation and our contract with you. We may substitute quoted products for suitable alternatives should your chosen ones become unavailable or are likely to unduly delay the timely progress of the ITPS:
- 3.2 Any times and dates provided by us to you for the provision of ITPS shall be estimates only and time shall not be of the essence of these conditions.
- 3.3 Where our quotation includes the supply of software to you;
- 3.3.1 you accept and agree that we have not recommended that you purchase any particular software and as such we do not have any liability under the contract for such choices you will have made;
- 3.3.2 you agree that you will not to make use of the software in any way until you have accepted the applicable user licenses;

- 3.3.3 you agree not to undertake any act whatsoever in breach of any user license and to notify us in a timely manner should you become aware of any such breach;
- 3.4 Any goods we supply as part of the ITPS will be of satisfactory quality upon delivery; however you agree that should any goods prove damaged or deficient on delivery your sole remedy in such a case will be replacement of such items as prove to be damaged, but only in respect of those goods notified to us as being damaged within 7 days of delivery.
- 3.5 Managed Services;
- 3.5.1 Managed services will be set out in the quotation and/or scope of works;
- 3.5.2 As part of our services to you, you grant us unrestricted remote or physical access to all hardware, software, media or other such access as we require to reasonably fulfil or obligations to you;
- 3.5.3 You will provide us with no less than 7 days' notice of your intention to make changes to any devices under our management. Any implications to our service due to your proposed changes will be provided to you after these have been appropriately assessed by us;
- 3.5.4 In the event of you making changes, we reserve the right to amend our charges or terminate the contract.
- 3.6 Hosted Services;
- 3.6.1 Our hosted services will be available to you for an average of 99.9% of the time available over a rolling 12 month period. Planned maintenance is not included in the calculation of downtime and we will use reasonable endeavour to provide 24 hours' notice of any none essential maintenance. For essential service critical maintenance, 1 hour notice will be given were possible;
- 3.6.2 Critical system issues will be resolved within 8 hours, none critical system issues will be resolved within 16 hours;
- 3.6.3 Customer configuration changes, for example adding new users, will require 3 days written notice. Under special circumstances, if agreed by and at the sole discretion of T1S, changes may be made quicker.
- 3.6.4 The provisions of clause 3.6.1 refers to our equipment only, any downtime due to the failure or non-availability of third party equipment, BT or other service line providers for example, is not included within the 99.9% availability.
- 3.6.5 You are not permitted to resell or share with any other individual or entity not party to the contract for the Hosted Service in question any of the hosted services we provide to you without our prior written authority.
- 3.7 Support Contracts:
- 3.7.1 Our support will be offered on equipment as detailed and agreed within our quotation and/or scope of works;
- 3.7.2 Unless otherwise stated in the scope of works, time allowed to resolve system issues will be as set out in the hosted service section.

4 YOUR OBLIGATIONS

- 4.1 You shall:
- 4.2 give us all reasonable co-operation in relation to all matters regarding the ITPS;
- 4.3 provide such access to your premises and any data, in a timely manner, as we require in order to satisfy our obligations under our contract with you;
- 4.4 at our request, provide such information, in a timely manner, as we may request;
- 4.5 ensure that any data and other information of any nature, that we may require from you in order to satisfy our obligations under our contract with you, is accurate in all material respects;
- 4.6 ensure that the premises within which the ITPS are to be provided are safe and suitably prepared for the implementation of the supplies, at your own cost.

- 4.7 be liable to pay to us, upon receipt by you of our invoice, all our reasonable costs, charges and losses incurred (including any loss of profit and opportunity costs) by reason us incurring delays or being prevented from undertaking our obligations as a result of any non-performance of your obligations under the contract between you and us.
- 4.8 notify us at least 5 working days prior to the agreed date for the delivery of the ITPS if for whatever reason you are unable to satisfy your obligations under the contract, failure to notify us in a timely manner may incur you costs should we be unable to find suitable alternative employment for the resources allocated to the contract.
- 4.9 pay our invoices as per any agreed payment schedules within the contract or in the absence of any specific payment provision as detailed within the fees, invoicing and payment section of these terms.

5 FEES, INVOICING & PAYMENT

- 5.1 The ITPS may be provided by us on a time, material and expenses basis or on a fixed price. The method and values will be detailed within our quotation and order acceptance document.
- 5.2 Where our quotation specifies ITPS to be made on a time, material and expenses basis, our base daily rate is calculated on the basis of a normal seven and a half hour day worked between the hours of 8.30am and 5.30pm Monday to Friday excluding Bank holidays. Where time based IT Supplies are delivered outside of normal hours then rates will be at 150% of normal rates.
- 5.3 Unless our quotation and order acknowledgement specifies to the contrary, we will invoice you;
 - 5.3.1 for the supply only of software, hardware, data or other medium (goods)as soon as reasonably practicable after the delivery of the goods in question;
 - 5.3.2 for the provision of Consultancy or similar work, including any materials and expenses incurred monthly in arrears;
 - 5.3.3 for the provision of other ITPS plus materials and expenses incurred monthly in arrears;
 - 5.3.4 for the provision of fixed price ITPS monthly in arrears for the proportion of the contract as we reasonably consider, at our sole discretion, to have completed to the end of the month in which the invoice is submitted;
- 5.4 Our quoted prices are net and exclude VAT or any other applicable taxes or the like, these will be added to our invoices at rates prevailing at the date of the invoice.
- 5.5 You will have no right of deduction from or set off against our invoices.
- 5.6 The value of the invoices, we submit to you, will be paid to us by you no later than 30 days from the date of such invoice.
- 5.7 Without prejudice to any other rights and remedies we may have, should you fail to pay our invoices by their due date, we reserve the right to;
 - 5.7.1 without reference to you (and by entering into this contract you acknowledge and give your express agreement that we will not be liable for any losses of any kind you may incur as a result of this clause 5.7.1) suspend the provision of further ITPS until overdue invoices have been paid in full and/or have user licences revoked;
 - 5.7.2 charge interest on any overdue amounts from their due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds Bank plc. Interest will accrue on a daily basis and will be compounded quarterly until payment is made.
- 5.8 Payment of our invoices by their due dates shall be of the essence of the contract between you and us. Failure to pay our invoices before or on the due date shall be deemed to be a breach of contract which is not capable of remedy.
- 5.9 We may set off any liability we have to you against any liability you may have to us.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Intellectual property rights shall vest in their originator.

- 6.2 You grant us a royalty free licence during our contract with you to use any intellectual property vesting in you required by us to enable us to provide the ITPS and satisfy our obligations to you.
- 6.3 Other than existing intellectual property vesting in you prior to the date of commencement of the ITPS, all intellectual property and other rights in the deliverables of the contract will be owned by us, however, we licence you, free of charge on a non-exclusive basis to make use of the deliverables as the contract envisaged. Should we legitimately and lawfully terminate our contract, any licence granted by us to you pursuant to this contract will automatically cease.
- 6.4 The intellectual property rights in any software we procure the use of for you is vested in others and we do not grant you any rights over the software or its use whatsoever. You agree that any licences to use software are granted by the licensors of such software directly to you and you understand and agree that you will use such software subject to its terms of use.

7 LIMITATION OF LIABILITY

- 7.1 We will procure and deliver the ITPS as described within our order acceptance and these terms and conditions but exclude to the fullest extent permitted by law any liability which may be created by other warranties, conditions or implied terms.
- 7.2 Our (including our employees, sub-contractors or other such agents) liability to you in respect of any breach of these terms and conditions and order acceptance, use you make of ITPS, representation, tortious act including negligence shall be limited to the value of our contract with you.
- 7.3 We shall not be liable whether in tort (including breach of statutory duty or negligence), misrepresentation, contract or otherwise for loss of profits, loss of business, loss of expected savings, loss of contract, loss of goods, loss of use, loss of data, corruption of data or any indirect and /or consequential or economic losses or the like.

8 INSURANCE

In relation to our potential liabilities under our contract, we will take out and maintain the insurance policies detailed in our schedule of insurances as time to time amended.

9 CONFIDENTIALITY

- 9.1 During the process of the provision of the ITPS, it is likely that the parties will be provided with and/or be exposed to confidential information by each other. In respect of any confidential information of which either party is the recipient, such recipient/s shall;
- 9.1.1 use reasonable endeavours to protect and maintain the confidentiality of such confidential information of which he is a recipient;
- 9.1.2 only use such confidential information to the smallest extent necessary in order to satisfy that parties obligations under the contract;
- 9.1.3 not disclose the confidential information to any body or person other than those of its employees, sub-contractors, agents being involved in the provision of the ITPS, each parties auditors or other professional advisers or other body or person having a statutory or legal right to access;
- 9.2 The provisions of this section will not apply to any confidential information which is in the public domain other than as a result of the breach of the other clauses in this section 9 or was properly in the possession of the recipient before its disclosure as part of the ITPS contract.
- 9.3 Damages may not be an adequate remedy for any breach of this clause and the parties agree this and concur they will be entitled to enforce compliance with this clause in a court of law.

10 DATA PROTECTION

- 10.1 If, as part of the ITPS contract, we are required to process personal data on your behalf, we will:
- 10.2 Only process such data with your permission;
- 10.3 Apply reasonable appropriate measures to guard against accidental loss or damage to data or unauthorised access or processing of such data;
- 10.4 Only process such data to the smallest extent necessary to satisfy our obligations under the contract.

11 TERMINATION

- 11.1 We may terminate our contract with you, by giving you written notice, in the following circumstances;
- 11.2 You threaten not to, or fail to, make payment of our invoice/s by the due date;
- 11.3 You fail to progress your obligations under the contract in a timely manner by giving you 21 days written notice of our intention so to do;
- 11.4 You commit and continue to commit a material breach of contract. Termination under this clause will only take place if we give you notice of your breach and give you 21 days from the date of the notice within which to remedy the breach, should the breach not be remedied within this time then termination will take place;
- 11.5 If an application is made to a court, or an order is made, for the appointment of an administrator or receiver or you commence discussions with creditors regarding rescheduling your debts;
- 11.6 If you have a change of control.

12 CONSEQUENCES OF TERMINATION

- 12.1 In the event of termination of our contract with you;
 - 12.1.1 We will within, 30 days of such termination, return to you any confidential information that you provide to us as part of the contract;
 - 12.1.2 You will, within 30 days of such termination, return any confidential information or property we may have provided to you under the contract;
 - 12.1.3 Make payment of any outstanding invoices within 7 days of termination, whether due or not.

13 ASSIGNMENT & SUB CONTRACTING

- 13.1 Both parties may assign, novate or otherwise transfer the contract to any other party with the express written agreement of the other party, such agreement not to be unreasonably withheld.
- 13.2 We may sub-contract part or all of our obligations under the contract.

14 FORCE MAJEURE

- 14.1 Should a party to these terms and conditions be subjected to a force majeure event, that party will not be in breach of these terms and conditions or become liable as a result for failure or delay in the performance of any of its obligations under the contract, but only to the extent that such failure or delay is as a result of the force majeure event.

15 NOTICES

- 15.1 Where any notice is to be given under the contract, it must be written in English and signed by a duly authorised signatory of the party issuing it.

15.2 Notices may be delivered personally by hand, by first class post, recorded delivery or commercial courier, sent to the address marked for the attention of the person or body dealing with the contract on behalf of the receiving party or alternatively by fax to the number on the letterhead of the receiving party.

15.3 Notices will be treated as being served at the time of delivery if personally hand delivered, immediately a successful sent fax transmission document is obtained, at 10.00am two days after posting by first class mail or at the time of obtaining a signature if delivered by courier but only if delivery by any means is during normal working hours excluding bank holidays.

16 INVALIDITY

16.1 Each of the provisions of these terms and conditions is severable. If any provision is found to be or becomes illegal, invalid or unenforceable in any respect under the law of jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions of these terms and conditions shall not in any way be affected or impaired by it.

17 WAIVER

17.1 No waiver by either party of any breach or non-fulfilment of any of the provisions of these terms and conditions shall be deemed to be a waiver of any subsequent or other breach of that or any other provision and no failure to exercise or delay in exercising any right or remedy under these terms and conditions shall constitute a waiver of that right or remedy.

17.2 No single or partial exercise of any such right, power or remedy shall preclude or impair any other or the further exercise of it or the exercise of any other right, power or remedy provided by law or under these terms and conditions.

18 DISPUTES

18.1 Any dispute arising between the Parties under these terms and conditions will be discussed between the parties and an attempt to resolve it/them by discussion and negotiation will take place.

Any dispute that cannot be resolved between the parties by discussion within 14 days of the first party giving to the other written notice of a dispute then the dispute may be referred to an expert who will deliver his/her decision within an appropriate length of time. Where the parties cannot agree on an expert, the choice of such expert shall be referred to BCS – The Chartered Institute for IT who will appoint an expert on behalf of the parties.

18.2 The decision of the expert shall be final and binding on the parties who will bear the experts costs in such proportion as the expert shall determine as appropriate under the circumstances.

19 JOINT VENTURE OR PARTNERSHIP

19.1 Nothing in these terms and conditions shall constitute or be deemed to constitute a joint venture or partnership between the parties and neither of them shall have any authority to bind the other in any way.

20 ENTIRE AGREEMENT

- 20.1 These terms and conditions constitute the whole and only agreement between the parties and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements whatsoever between the parties.
- 20.2 The Parties confirm that these conditions and the order acceptance shall not confer any rights on any person who is not a party to it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

21 RISK & TITLE

- 21.1 Where the ITPS involve the supply of goods including but not limited to software, hardware, data or other similar material, risk in the goods will pass to you upon delivery to you of such goods.
- 21.2 Title to any ITPS will remain with us, whether delivered to you or in your possession in any way until payment in full for such IT Supplies has been received as cleared funds by us after which time the title in the goods will pass to you.

22 INDEMNITY

- 22.1 You accept and agree that you will indemnify us against any and all losses, claims, demands, expenses and liabilities of any nature which we may sustain or suffer arising from any breach by you of your obligations under these terms and conditions.

23 GOVERNING LAW & JURISDICTION

- 23.1 These terms and conditions shall be governed by and construed in accordance with English law.
- 23.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction over any dispute or claim or matter that arises out of or in connection with these terms and conditions.