



## DIGITAL TOUCH SYSTEMS, INC. STANDARD TERMS AND CONDITIONS

1. Orders and Governing Terms. Digital Touch Systems, Inc. ("DTS") orders shall be initiated by a written order to DTS as may be accepted by written acknowledgement in the form of an Invoice (each, an "Order"). No Order shall be binding upon DTS unless and until accepted by DTS in writing by an Invoice or by shipment or other delivery of DTS hardware and Software (the "Products") or delivery of DTS services (the "Services"). "Products" shall mean individually and collectively, for purposes hereof, Hardware and the licensing of any DTS software ("Software"), separately or collectively, included in DTS's general product lines. DTS shall not be bound by any terms of Customer's Order that are inconsistent with the terms set forth herein or its Invoice. All Order acceptances, product shipments, and services shall be conditioned upon Customer's unqualified acceptance of these terms, made by written acceptance by Customer of DTS Invoice, or by its receipt of delivery of Products or use thereof and failure by Customer to return the same to DTS or discontinue use within five (5) days following such delivery.
2. Shipping and Delivery. All Hardware shall be packed for shipment in DTS's standard containers, marked for shipment to the address specified in Customer's Order, and delivered to a carrier or forwarding agent chosen by DTS. All shipments will be F.O.B. DTS's principal place of business in Austin, Texas, at which time risk of loss passes to Customer, and all freight, and other shipping expenses shall be Customer's sole responsibility.
3. Payment and Taxes. Unless otherwise agreed in writing, Customer shall pay DTS upon receiving DTS' invoice or at the time of the subscription enrollment. Accounts outstanding more than thirty (30) days may be subject to a monthly charge at the rate of one and one-half percent (1 ½ %) per month or the maximum permitted by law, whichever is less. Unless otherwise stated in a writing signed by DTS, prices are quoted in US Dollars and shall be exclusive of all installation charges, sales, use or other taxes or duties. Any such applicable charge, tax or duty shall be borne by Customer in addition to the prices invoiced. At its discretion, DTS will accept payment by cash, wire transfer, by check or by credit card. In the event a customer wishes to pay in any method other than, wire transfer, cash or check a 3% processing fee may be applied to the invoice.
4. Software as a Service. DTS provides Software as a Service (SaaS) (the "Services"). The Services are either for a monthly or yearly period or such other periods as agreed upon (the "SaaS Service Period") at DTS's stated prices in effect at the time of the commencement of the SaaS Service Period for the licensing of one (1) or more DTS Products. These Services will be provided to Customer to the extent that Customer purchases the Services with respect to Products on the terms and conditions herein unless otherwise stated in writing signed by DTS.
5. Software Update Service. DTS will provide to Customer, provided the Customer maintains Software as a Service coverage, all updates, enhancements, corrections, and improvements to the Products, and its related documentation (collectively, the "Enhancements"), which DTS generally makes available to its customers during the SaaS Service Period. For these purposes, Enhancements shall not be deemed to include any product software features that add functionality to the Products, to the extent that DTS markets such software features under a different product name or a new product version number. While DTS will use commercially reasonable efforts to develop appropriate Enhancements, DTS shall not be obligated to provide any specific Enhancement, and DTS shall, in its sole discretion, determine the nature, content, and timing of the provision of all Enhancements.
6. Extended Warranty. For DTS Hardware, Customer may elect to purchase an extended warranty no later than sixty (60) days prior to the end of the initial one year Service Period for such Hardware. If, during any additionally purchased Service Period(s), Customer determines that the Products do not, under normal use and conditions, operate substantially in accordance with the documentation supplied by DTS for such Products, and Customer notifies DTS in writing that the Products do

not so operate and includes an explanation of how the Products fail to so operate, and DTS determines that the Products do not operate substantially in accordance with the documentation supplied by DTS for such Products, DTS will modify or replace such Products and return it to Customer, freight prepaid, upon Customer's return of all such Products. DTS shall have no warranty obligations whatsoever with respect to any Products that have been modified in any manner from the form in which it was delivered by DTS. DTS shall also have no warranty obligations with respect to any version of the Products labeled by DTS as an "end-of-life" product after the "end-of-life" date.

7. Incorporation of Software License Agreement. All software and documentation provided by DTS will be received and accepted by Customer subject to the DTS Software License Agreement, a copy of which is available to Customer and which is incorporated herein in its entirety by this reference. By receiving the Product(s), Customer is deemed to have accepted the Software License Agreement that also can be found at [www.digitaltouchsystems.com](http://www.digitaltouchsystems.com).

8. Software. Customer acknowledges that all DTS Software Products are licensed (and not sold), including its SaaS product. Any references such as "purchase" or "sale" of Software Products signify only the purchase of a license to use one (1) copy of the Software Product, for each Product purchased, in question pursuant to the terms of the DTS Software License Agreement. Customer agrees to be bound by all the terms of such Software License Agreement and agrees that it shall acquire no rights with respect to a software product other than the right to use one (1) copy of it pursuant to the terms of such Software License Agreement.

9. Copyright Infringement.

(a). Indemnity. DTS will, and reserves the right to, defend, at its own expense, any claim, suit or proceeding brought against Customer to the extent it is based upon a claim that any Products licensed from DTS infringe upon any United States copyright of any third party. Customer agrees that it shall promptly notify DTS in writing of any such claim or action and give DTS full information and assistance in connection therewith. DTS will pay all damages, costs and expenses finally awarded to third parties against Customer in such action, other than in connection with a compromise or settlement of such claim made without DTS's consent. DTS shall have the exclusive right to settle or compromise any such claim or action. If a product is, or in DTS's opinion might be, held to infringe as set forth above, DTS may, at its option, replace or modify such Product so as to avoid infringement, or procure the right for Customer to continue to use such Product. If neither of such alternatives is in DTS's opinion commercially reasonable, the infringing product shall be returned to DTS and DTS, as its sole liability, shall refund the amount paid for such Product by Customer.

(b). Limitations. DTS will have no liability for any claim of infringement to the extent such claim arises as a result of Customer's use of a product in combination with any items not supplied by DTS, any modification of a product by Customer or third parties or the use of other than the most recent release of any software provided by DTS to Customer, if such claim would have been avoided but for such combination, modification or failure to use such release.

(c). Entire Liability. **THE FOREGOING STATES THE ENTIRE LIABILITY OF DTS TO CUSTOMER CONCERNING INFRINGEMENT OF COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.**

10. Limited Warranty. Products are sold subject to the provisions of the DTS Limited Warranty set forth below:

(a). Warranty period. Unless otherwise agreed to in writing, the warranty period for each Product begins on the date the Product is shipped or made available for use unless another warranty period is otherwise specified on the Invoice.

(b). Hardware warranty. DTS warrants Hardware to be free from defects in workmanship and material for one (1) year which begins on the date Hardware is shipped to Customer. Customer's exclusive remedy and DTS's sole obligation and liability under this warranty is to repair or replace, at DTS's discretion, any failed Hardware item returned by



Customer under a proper return material authorization (RMA) number because of a defect in workmanship or material. Replacement parts furnished under this warranty may be refurbished or contain refurbished components.

(c). Software warranty. DTS warrants each item of Software, as delivered by DTS and properly installed on equipment it is originally licensed for, to function substantially as described in its accompanying user manual during its initial 90 day warranty period which begins on the date Software is first made accessible to Customer. DTS does not warrant that any item of Software or a Software Release is error-free or that its use will be uninterrupted. DTS is not obligated to remedy any Software defect which cannot be reproduced with the latest Software Release. These warranties do not apply to any Product which has been (i) altered, except by DTS or according to its instructions, (ii) used in conjunction with another vendor's product resulting in the defect, or (iii) damaged by improper environment, abuse, misuse, accident or negligence. If any item of Software fails to so function during its warranty period, as the sole remedy, DTS will provide a suitable fix, patch or workaround for the problem which may be included in a future Software Release. For specific Software which is distributed by DTS as a licensee of third parties, warranty terms offered by such third parties to end-users may instead apply to Customer.

(d). Service warranty. DTS warrants that Services will be performed in a workmanlike manner.

**DTS'S LIMITED WARRANTY IS SET FORTH HEREIN AND IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. DTS MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, RELATING TO ITS PRODUCTS, INCLUDING THE DTS SOFTWARE AND HARDWARE AND RELATED DOCUMENTATION OR USE THEREOF AND EXPRESSLY EXCLUDES AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MOREOVER, THE PROVISIONS SET FORTH IN SUCH LIMITED WARRANTY STATES DTS' ENTIRE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY BREACH OF ANY WARRANTY.**

11. Limitation of Liability. Customer agrees that DTS's liability to Customer in any way connected with the Products, Services or use thereof, regardless of the form of action, shall in no event exceed the price paid by Customer for such Products or Services. Under no circumstances shall DTS be liable for any damages resulting from DTS's failure to meet any delivery schedule, even if DTS has been advised of the possibility of such damages. **UNDER NO CIRCUMSTANCES AND UNDER NO THEORY OF LIABILITY SHALL DTS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS, LOST SAVINGS, LOSS OF INFORMATION OR DATA OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, OR ANY LIABILITY OR DAMAGES TO ANY THIRD PARTY, HOWEVER CAUSED, ARISING IN ANY WAY OUT OF THE SALE, LICENSE, USE OR INABILITY TO USE, ANY DTS SOFTWARE, PRODUCT OR SERVICE, EVEN IF DTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.**

12. Export Restrictions. Customer shall not export, re-export, or transfer, directly or indirectly, any Product, item, or technical data received from DTS to any country or user to which such export, re-export, or transfer is restricted by U.S. laws or regulations (or by the applicable laws or regulations of another country) without first obtaining all required governmental licenses, authorizations, and certifications.

13. Miscellaneous.

(a). Waiver. The waiver by DTS of any default by Customer with respect to these terms and conditions will not waive subsequent defaults by Customer of the same or different kind.

(b). Governing Law. The terms and conditions set forth herein, and all issues related to the subject matter thereof, will be governed by and construed in accordance with the laws of the State of Texas, United States of America without regard to its provisions concerning the applicability of laws of other jurisdictions. Customer hereby agrees and submits to the

personal jurisdiction and venue thereof in Austin, Travis County, Texas as if the performance was wholly within the State of Texas and without giving effect to the principles of conflict of law. The parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to the Terms and Conditions of this Agreement or a breach thereof, shall be settled by arbitration in Austin, Travis County, Texas USA in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered in any court in Travis County, Texas having jurisdiction thereof.

(c). Entire Agreement. The terms and conditions set forth herein, including DTS's Software License Agreements shall constitute the entire agreement between DTS and Customer with respect to the subject matter thereof, and they shall not be amended, or qualified or interpreted by any trade usage or prior course of dealing, unless expressly authorized in writing by DTS.

13. Termination of The Agreement: Digital Touch may terminate this Agreement if A) Customer fails to cure any breach of its obligation within twenty (20) days after notice from Digital Touch; or B) in its sole and reasonable judgement, it determines the customer is bankrupt, insolvent or demonstrates an inability to meet its obligations. In the event of any early termination other than in accordance with section 2 of the Software License Agreement or a breach by Digital Touch, Customer shall pay all outstanding amounts owed to Digital Touch plus a cancellation fee of \$275.00. Customer agrees that all payment obligations are unconditional for the duration of the Initial Term plus any Extended Term, and that no payments are subject to setoff, abatement, or reduction.