

# TERMS & CONDITIONS OF TOUCHWISE FOR THE SALE AND DELIVERY OF GOODS AND/OR EQUIPMENT.

## 1. DEFINITIONS

- 1.1. "COD" – means cash on delivery and for the purposes hereof shall include an EFT;
- 1.2. "Client Form" – means the client form that is used to collect client information for statistical and other purposes with due observance to prevailing legislation relating to the protection of customer privacy.
- 1.3. "EFT" – means electronic funds transfer and will qualify as a COD when made within 24 (twenty four) hours prior to delivery of goods.
- 1.4. "Installation" means the installation of purchased electrical goods and/or equipment following the purchase hereof by the Client.

## 2. TERMS OF PURCHASE

A quotation represents no obligation until TOUCHWISE has accepted the Client's official purchase order.

## 3. SPECIFICATION

- 3.1. The goods and/or equipment delivered will be in accordance with the specification contained in the quotation provided to the client. TOUCHWISE will not be liable for non-compliance with any other specification. It remains the Client's responsibility to ensure that it is satisfied with the specifications and the quote provided.
- 3.2. Any changes to the specifications by the Client will be undertaken following the written agreement of TOUCHWISE. Where any such changes cause an increase in the cost or time required for performance, TOUCHWISE shall be entitled to an equitable adjustment in the contract price and the delivery schedule and a formal quotation process will be undertaken in this regard.

## 4. PAYMENT

- 4.1. All sales are strictly cash on delivery
- 4.2. 60% Deposit on acceptance of quotation balance on date of completion.
- 4.3. Delivery will only take place after TOUCHWISE bankers confirmed clearance of Payment.
- 4.4. Any deposit paid by the Client on acceptance of the quotation is non-refundable.
- 4.5. Payment shall be cash on delivery of the goods and/or equipment.
- 4.6. Notwithstanding anything to the contrary and unless otherwise agreed upon, in writing, the maximum rate of interest permitted in terms of the National Credit Act, 2006 and the regulations thereto will be levied as *mora* interest on all overdue amounts.
- 4.7. In the event of the Client failing to effect payment of the purchase price within two (2) days from date of demand, TOUCHWISE shall be entitled, at its discretion, and notwithstanding any indulgence or relaxation granted to the Client without prejudice to any other rights it may have in terms of this agreement or common law, to cancel this contract and repossess the Goods and/or claim the balance thereof. TOUCHWISE shall be entitled to re-sell such goods and/or equipment either by auction or by private treaty.
  - 4.7.1. The Client shall be liable for any shortfall or shall be passed a credit note for all amounts received in excess of the expenses of recovery and resale.
  - 4.7.2. The Client shall be liable for all legal costs, including collection charges and disbursements incurred by TOUCHWISE in the recovery of such debt on the Attorney and Own Client Scale.
- 4.8. The Client shall pay all accounts in full and cannot exercise any rights of set-off or counterclaim against invoices submitted.

## 5. OWNERSHIP

- 5.1. Ownership of the hardware shall remain vested in the seller until outstanding balances are fully paid.

## 6. PRICE FLUCTUATIONS

Unless otherwise stated the price quoted in the quotation or offer, the price is in South African Rands and is based as at the date thereof on the cost ruling with regard to a number of criteria. These include freight, applicable insurances, coastal and landing charges, customs, dock and import duties, cartage and railage, rates of exchange, any statutory costs and all other such similar encumbrances. However, if any of the purchased goods and/or equipment are supplied to the Client thirty (30) days after the initial order and there is any increase in respect of the cost to TOUCHWISE of any of the criteria stated herein, then such increase will be for the Client's account.

## 7. DELIVERY

- 7.1. TOUCHWISE undertakes to make every effort to meet the delivery period as quoted, but does not guarantee to do so. TOUCHWISE will not under any circumstances accept responsibility for delivery delays due to circumstances beyond its control, including, but not limited to, acts of Nature, fire, explosion, strikes, lockouts, inability to obtain components, delays by sub-contractors, actions by government, or losses and delays in transit. A reasonable extension of time shall be granted to TOUCHWISE by the Client in the event of any delays that are beyond its control.
- 7.2. The place of delivery will be as specified on the quotation.
- 7.3. Where the goods and/or equipment are not delivered by TOUCHWISE or collected by the Client, but are delivered to an independent carrier, delivery to the carrier shall be deemed to be delivery to the Client.

## 8. RISK AND OWNERSHIP

- 8.1. Risk will transfer to the Client upon delivery of the goods to the Client
- 8.2. Where the Goods have been delivered pursuant to Clause 6.3, the appointed carriers shall be fully responsible for materials lost or damaged in transit.
- 8.3. The ownership in the goods and/or equipment shall not pass to the Client until all amounts due from the Client to TOUCHWISE in respect of goods and/or equipment sold, delivered or made available in any other way to the Client including any labour has been paid for in full to TOUCHWISE.
- 8.4. TOUCHWISE shall have the right at any time to give notice of its continued ownership in the goods and/or equipment to every possessor and every landlord of premises in which the goods and/or equipment are stored or may be placed, whether for sale, repair, assembly or otherwise.
- 8.5. Without prejudice to any of its rights in terms of law, TOUCHWISE reserves the right to enter the Client's premises and to repossess the goods and/or equipment in the event of the Client failing to make any payments on due date or at all.

## 9. CANCELLATION

- 9.1. In the event of cancellation by the Client of the contract or any part thereof, or in the event of TOUCHWISE cancelling the contract as a result of a breach by the Client of any of these conditions, TOUCHWISE shall be entitled to payment of a standard cancellation fee not less than 40% of the value of the contract so cancelled plus:
  - 9.1.1. The sales value of all goods and/or equipment delivered.
  - 9.1.2. The sales value of all goods and/or equipment finished and not delivered at the time of such cancellation.
  - 9.1.3. The sales value of all materials ordered by TOUCHWISE specifically for such an order whether such materials have been received or not.
  - 9.1.4. The cost of all labour accumulated on any unfinished goods and/or equipment in the process of assembly.
  - 9.1.5. The sales value of any special engineering and other costs incurred up to the time of cancellation.
  - 9.1.6. TOUCHWISE shall be entitled to suspend or cancel further deliveries and to suspend or cancel work under this or any other contract between TOUCHWISE and the Client if any payment is overdue.
  - 9.1.7. TOUCHWISE may, by notice in writing, cancel the purchase order if the Client becomes insolvent or makes an arrangement with its creditors or goes into voluntary liquidation or is placed under a provisional or final order of sequestration or judicial management.

## 10. WARRANTY

- 10.1. TOUCHWISE warrants that in the event of any defect in the goods and/or equipment occurring within a period of twelve (12) months from the date of delivery to the Client, TOUCHWISE will repair, or refund the cost of the goods and/or equipment at its discretion provided that:
  - 10.1.1. The goods and/or equipment have not been misused, inadequately stored, neglected or used other than for its intended purpose, or if its operating instructions have not been adhered to;
  - 10.1.2. The goods and/or equipment have not been serviced by any person who has not been authorised by TOUCHWISE;
  - 10.1.3. TOUCHWISE is notified in writing within the warranty period and, except where TOUCHWISE elects to repair on site, goods and/or equipment or any faulty component thereof is sent / delivered to TOUCHWISE designated address at the Client's own risk and cost.
  - 10.1.4. Should any parts, materials or components forming part of the goods and/or equipment sold by TOUCHWISE to the Client, be assembled by anyone else other than TOUCHWISE, then the manufacturer's normal warranty in respect of those parts, materials or components shall apply and no further warranties in this regard will be given by TOUCHWISE.
  - 10.1.5. TOUCHWISE liability will not extend beyond that of the manufacturer's liability.
- 10.2. If at any point TOUCHWISE has tie in or intergrade into the Client's network or any existing installation, TOUCHWISE will take no responsibility for any faults or instability in the Client's network or any existing installation that may cause the newly installed equipment not to function properly, or inconsistently. Any fault finding or repair to the Client's network or any existing installation would not be included in the original quote.
- 10.3. All workmanship undertaken by TOUCHWISE shall carry a sixty (60) days warranty from the date on which the workmanship was completed, provided that the faulty workmanship can be attributed to TOUCHWISE, TOUCHWISE will repair or refund the reasonable cost thereof at its discretion provided that:
  - 10.3.1. TOUCHWISE is notified in writing within the warranty period;
  - 10.3.2. No parts, materials or components forming part of the goods and/or equipment sold by TOUCHWISE to the Client, be assembled by anyone else other than TOUCHWISE.

## 11. LIABILITY

- 11.1. These terms set out TOUCHWISE entire liability in respect of the goods and/or equipment and TOUCHWISE liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities expressed or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose of the goods and/or equipment.
- 11.2. TOUCHWISE shall not, under any circumstances, be liable for
  - 11.2.1. Any loss or injury whatsoever (including indirect or consequential loss including loss of profit) arising from the supply of the goods and/or equipment, including any loss or injury (whether direct, indirect or consequential) attributed to any negligent act of TOUCHWISE or TOUCHWISE servants or agents; or
  - 11.2.2. Any representations or warranties as to the goods and/or equipment given by any of TOUCHWISE servants or agents.

## 12. GENERAL

- 12.1. This document constitutes the sole and entire agreement between the parties.
- 12.2. TOUCHWISE shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 12.3. No addition to, variation of, or agreed cancellation of this contract shall be of any force or effect unless reduced to writing and signed by both parties.
- 12.4. No indulgence which TOUCHWISE may grant to the Client shall constitute a waiver of any of the rights of TOUCHWISE, who shall not thereby be precluded from exercising any rights against the Client which may have arisen in the past or which might arise in the future.

## 13. NOTICES

- 13.1. All notices or demands to either party shall be in writing and may be served by hand delivery, registered mail, email or facsimile at the address of the receiving party as set forth in the request for quotation, quotation or purchase order as applicable.
- 13.2. All notices and demands by mail shall be deemed to have been received within seven (7) days of postage, unless proved otherwise by the receiving party.

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 First Names & Surname ID Number Signature Date

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 If a Company, accepted on Behalf of: Company Name & Stamp Legal Address