

TXDigital USA Terms and Conditions

1. **Scope.** These Terms and Conditions apply to the supply of any goods or services by Texas Digital Systems Europe B.V. (“TXDigital”). The acceptance of any quotation, proposal, or offer (“Order”) to supply, install and maintain hardware, displays, and related accessories (“Equipment”) as well as software and related services offered by TXDigital is the complete statement of the agreement superseding all oral and written communications concerning it between TXDigital and the Customer (as identified on an Order). Any attached Statement of Work (“SOW”) included with an Order takes precedence to the extent the SOW may have any conflict with these Terms and Conditions. Customer is responsible for complying with TXDigital’s site preparation and other Product (as identified by Part # in the Order) deployment guidelines.

2. **Prices, Delivery, Invoices and Payment.** Product prices stated on the Order are applicable to this Order only. TXDigital will deliver shipped Products FOB Origin (Point of Shipment) – Freight Prepaid and Added to Buyer’s Invoice. Prices do not include, and Customer will pay TXDigital for, all applicable shipping, insurance, installation and distribution charges, fuel surcharges, and any sales, use and like taxes. TXDigital may change its prices and rates at any time; however, changes will not affect Orders accepted prior to the effective date of the change. If TXDigital stores Products at Customer’s request, Customer will pay applicable storage fees. Title to Products (other than software and deliverables licensed to Customer) and risk of loss pass to Customer and delivery occurs when TXDigital has tendered the Products to: (a) the carrier for delivery to Customer or Customer’s agent; or (b) if Customer requests TXDigital to store Products for Customer, the applicable storage facility. TXDigital will invoice Customer for Equipment, software and supplies on delivery; in advance for recurring services and rental; and monthly for non-recurring services and deliverables. If Customer cancels or delays delivery, Customer will pay TXDigital’s invoice for applicable cancellation or delay charges. Payments are due upon Customer’s receipt of invoice. If TXDigital does not receive payment within 30 days of the invoice date, TXDigital reserves the rights to: (a) charge late fees of the lesser of 1.5% per month or the maximum allowed by law, (b) repossess the applicable Products, and (c) suspend services or other deliveries, without waiving TXDigital’s right to payment. TXDigital retains a purchase money security interest in each Product until Customer pays for it. Customer appoints TXDigital as Customer’s agent to sign and file a financing statement to perfect TXDigital’s interest.

3. **Licenses.** Subject to Customer’s payment of all license fees, TXDigital grants Customer a non-transferable, non-exclusive license to use software (including deliverables defined under an attached SOW), in object code form only, only at the installation/shipping address for location/site listed on an Order and on the number of units of the class(es) and model(s) stated on the front of this Order. This license begins on delivery and terminates automatically if Customer violates this Section 3. On termination, Customer will immediately stop using the software and either return or destroy all copies. Software bearing the logo or copyright notice of a third party is subject to the third party’s license terms. Customer may not: copy software (except a single archival copy) or deliverables; transfer, assign, disclose, sublicense or distribute them to any party; or use them other than as allowed by this Order. TXDigital will consent to Customer’s transfer of software only to parties who sign TXDigital’s then-current order form or other license agreement and who pay any applicable fees. Customer will retain copyright notices and proprietary legends on all copies of software Customer possesses or transfers. TXDigital or its licensors retain ownership of all software and deliverables. Customer will not take any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of software. The terms of this Section 3 will apply to any fixes, patches, derivatives, updates, and upgrades which TXDigital may provide to Customer. Customer is not licensed to use any diagnostic tools that TXDigital may provide, and Customer agree not to copy or use them, or disclose them to any third party without TXDigital’s express written consent. TXDigital may delete or remove diagnostic tools at any time without notice. DIAGNOSTIC TOOLS, IF ANY, ARE PROVIDED “AS IS”.

4. Maintenance and Support Services.

4.1. Maintenance services have an initial term as stated on the front of this Order. If applicable as reflected in the Order, the maintenance services will automatically renew for additional one year terms unless Customer or TXDigital provides written notice of non-renewal at least 90 days prior to the renewal date. TXDigital may change its prices and rates for time and material services at any time, and may change its prices and rates for recurring maintenance services annually, but in no event shall a price increase during the term exceed the annual percentage increase in the Consumer Price Index for Services For All Urban Consumers plus 2%. During the term of a maintenance service contract, TXDigital will maintain covered TXDigital Equipment to operate in accordance with its published specifications, and covered non-TXDigital Equipment to operate substantially as it did at the time of original purchase, normal wear and tear excepted. TXDigital's prepaid maintenance services include parts, and labor during covered hours. TXDigital is not obligated to provide software services for any supported software that has been altered other than by TXDigital or at TXDigital's direction. The life of Equipment is dependent on its installation environment and level of use. TXDigital may move Equipment to “end of life” support status by providing at least one year notice. TXDigital will continue to maintain Equipment in end of life status on a best efforts basis, subject to the availability of parts, but that Equipment will no longer be included in any service level commitment or performance guarantee.

4.2. Customer is required promptly to notify TXDigital of any Equipment malfunctions or defects via TXDigital's web-based support provided as part of TXDigital's support services. Upon receipt of such notification, TXDigital will use its commercially reasonable best efforts to respond and to diagnose the problem. Upon receipt of such notification, a TXDigital certified support technician ("Support Technician") will attempt to diagnose the Equipment malfunction or defect and make a determination as to whether a replacement item of Equipment is required. If a replacement item of Equipment is required, the Support Technician will issue a returned merchandise authorization ("RMA") number, which will constitute Customer's authorization to return the failed or malfunctioning item of Equipment to TXDigital at TXDigital's cost (known as "Advance Exchange" or "Hot Swap"). Once a RMA number has been assigned to Customer, TXDigital will dispatch the replacement item of Equipment within two (2) business days (excluding weekends and holidays) of the Support Technician determination that a replacement item of Equipment is required. TXDigital will pay all shipping charges and bear all risk of loss with respect to any replacement item of Equipment prior to the delivery of the replacement item of Equipment to Customer.

4.3. Customer will complete Customer's responsibilities relating to the maintenance services as described in any attached SOW. Customer will provide TXDigital with a list of all Equipment and authorized locations to be supported hereunder as listed on and as of the effective date of the Order. Customer is responsible for selecting and operating the Equipment, for providing back-up equipment and services, and for safeguarding all programs and data, and removing, controlling, and reloading any funds contained in the Equipment. Customer will provide TXDigital service personnel with safe and reasonable access, working space, and facilities. Customer will provide access to Customer's networks, systems, data and relevant information, as necessary, to allow TXDigital to perform services. Customer will allocate appropriate resources and use all commercially reasonable efforts to avoid delay. If a unit of Equipment has been in service for more than five years and incurs excessive service actions due to its age, operating environment, or level of use, TXDigital may request to perform a customer-chargeable overhaul to extend its useful life. If Customer is unwilling to pay for the overhaul, TXDigital may terminate services offered under this Section 4 with respect to that unit of Equipment upon 90 days written notice.

5. Warranties and Indemnity.

5.1. TXDigital warrants that equipment, software, deliverables and supplies bearing TXDigital's logo or copyright will be free from defects in material and manufacturing, and will materially conform to TXDigital's published specifications in effect on the purchase date, for 90 days after delivery (30 days and then for the duration of the annual maintenance service period, if applicable). If during the warranty period Customer notifies TXDigital of any material non-conformance, TXDigital will correct the non-conformity (through repair, replacement or otherwise) in accordance with its standard warranty service terms and this Order. If TXDigital does not succeed within a reasonable time, Customer may return the defective Product for a refund.

5.2. For Non-TXDigital Equipment (i.e. third party OEM and not bearing TXDigital's logo or copyright) and unless provided to the contrary in an Order, TXDigital hereby assigns to Customer all assignable end user warranties received from the licensors of any Non-TXDigital Equipment distributed by TXDigital to Client pursuant to these Terms and Conditions. Products that bear the logo or copyright of another company will be subject to that company's warranty and support terms and TXDigital will have no warranty or support obligations with respect to such Products. TXDigital will act as the primary contact for Customer to initiate and manage the warranty claim with the applicable equipment manufacturer. Except as provided herein, all such Products are provided AS-IS. Additionally, problems not covered by TXDigital include those resulting from: unauthorized alterations or attachments; negligence, abuse or misuse, including failure to operate the Product in accordance with specifications or interface requirements; failure of goods or services not obtained from TXDigital or not subject to a then-effective TXDigital warranty or maintenance agreement; improper handling, use or storage of supplies; and, fire, water, acts of God or other catastrophic events. TXDigital makes no warranty that data or analysis is correct or accurate or that a Product will yield any specific business result, even if an expected business result is identified elsewhere in this Order. TXDigital does not warrant that Products will operate uninterrupted or error free, or that all deficiencies, errors, defects or non-conformities will be corrected. EXCEPT AS OTHERWISE STATED HEREIN, THERE ARE NO WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED. THERE ARE NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Customer's rights and remedies set forth in this Order are exclusive and in lieu of all other rights and remedies related to any Product (except to the extent that applicable law prohibits agreements to disclaim warranties or limit liabilities).

5.3. TXDigital warrants that services will be provided by trained and experienced personnel in a professional manner consistent with industry standards and as described in any attached SOW. If Customer notifies TXDigital within 30 days of the date of performance of any material non-conformance, TXDigital will reperform the services.

5.4. TXDigital will defend any claim or suit brought against Customer alleging that a Product (excluding any non-TXDigital Equipment or Software) infringes a patent, copyright or trade secret and will pay all costs and damages finally awarded as a result thereof, if Customer promptly notifies TXDigital of the claim and give TXDigital reasonably requested information and cooperation and sole authority to defend and settle the claim. In handling the claim, TXDigital may obtain for Customer the right to continue using the Product, or may replace or modify it so that it becomes non-infringing, or, if the foregoing are not reasonably available, TXDigital will refund license fees paid for infringing software. TXDigital is not obligated to indemnify Customer if the alleged infringement arises from: the use of a Product in connection with goods or services not furnished by TXDigital; TXDigital's compliance with Customer's designs, specifications or instructions; or modifications by anyone other than TXDigital or its subcontractors. This Section states TXDigital's entire liability for claims of infringement, and Customer's sole remedy against TXDigital for such claims.

6. **Limitation of Liability.** EXCEPT FOR ACTIONS ARISING OUT OF SECTION 3 (LICENSES), NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR LOSS OF PROFITS, REVENUE, TIME, OPPORTUNITY OR DATA, WHETHER SOUNDING IN CONTRACT, TORT, FRAUD, STATUTE, OR OTHERWISE. TXDIGITAL WILL HAVE NO LIABILITY FOR FAILURE TO DELIVER PRODUCTS BY DATES SET FORTH IN AN ORDER. NEITHER PARTY WILL BE CUMULATIVELY LIABLE TO THE OTHER FOR ANY AMOUNT GREATER THAN THE PURCHASE PRICE, FEES AND CHARGES SET FORTH IN THIS ORDER. Notwithstanding any limitations in this Section 6, (a) a party's liability for personal injury, including death, will be unlimited to the extent caused by that party's negligence or willful misconduct; (b) a party's liability for physical damage to tangible real or personal property will be the amount of direct damages, to the extent caused by that party's negligence or willful misconduct, up to one million dollars per occurrence; and (c) a party's obligation to indemnify, defend and hold the other harmless from third party intellectual property infringement claims is not limited by this Order. EACH CLAUSE OF THIS SECTION IS SEPARATE FROM EACH OTHER CLAUSE AND FROM THE REMEDY LIMITATIONS AND EXCLUSIONS ELSEWHERE IN THIS ORDER, AND WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF A REMEDY OR ANY TERMINATION OF THIS ORDER.

7. **Disputes.** Any controversy or claim, regardless of the causes of action alleged, will be resolved by arbitration before a sole arbitrator in the U.S. headquarters city of the party not initiating the claim pursuant to the then-current Commercial Rules of the American Arbitration Association and the federal substantive and procedural law of arbitration. Notwithstanding the foregoing, the obligation to arbitrate shall not apply to requests for preliminary injunctive or other equitable relief related to claims for misuse or infringement of a party's intellectual property rights, and either party may seek such relief in court with respect to such intellectual property pending the appointment of an arbitrator. In other respects this Order, together with the relationships and transactions it creates, is governed by New York law, excluding its laws regarding choice of law and the U.N. Convention on Contracts for the International Sale of Goods. The arbitrator's award will be final and binding, and may be entered in any court having jurisdiction thereof, but may include only damages consistent with the limitations in this Order. Each party will bear its own attorney's fees and costs related to the arbitration. Any claim or action must be brought within two years after the cause of action accrues.

8. **General.** No waiver of any contract provision shall be deemed a waiver of future enforcement of that or any other provision. Neither party may assign this Order or its rights or obligations under it, except TXDigital may assign this Order to an affiliate and may use subcontractors to fulfill its obligations. Neither party is liable for failing to fulfill its obligations due to acts of God or other causes beyond its reasonable control, except for Customer's obligation to make payments. This Order applies only to the United States; TXDigital will not provide Products or warranty service hereunder outside of the United States. Customer may not export Products without appropriate approvals from the United States and foreign governments.

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