



## TSI GLOBAL, LLC. STANDARD TERMS AND CONDITIONS

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**Please read this agreement carefully.**

By accepting a Sales Proposal, Service Description, and/or Bill of Material (any document so designated shall be referred to as an "Order") referencing these TSI GLOBAL, LLC Standard Terms and Conditions (the "Agreement"), or by otherwise accepting products or services from TSI GLOBAL, LLC ("TSI") under the terms of this Agreement, the party making such Order or accepting such products or services ("Customer") accepts the terms of this Agreement. If Customer does not agree to the terms of this Agreement, Customer must not accept the products or services of TSI, and must immediately contact TSI's manager of contracts to cancel any Order or request for products or services.

### **1. Products and Services.**

Subject to the terms and conditions of this Agreement, during the term of this Agreement, TSI shall provide to Customer the products, services and support as described in the Order. From time to time, the Customer may place additional Orders, which, upon written acceptance from TSI, will also be subject to the terms and conditions of this Agreement. Any transactions between Customer and TSI in the nature of the above described transactions, even if not subject to a properly executed Order, shall also be subject to this Agreement. To the extent that the language in this Agreement contradicts any language in any Order, the language in this Agreement shall control.

### **2. Software Licenses.**

a. **TSI's Standard Software License.** Subject to the terms below, TSI grants to Customer a personal, nontransferable, non-exclusive license to use one copy of the software listed in the Order, together with its corresponding user manual and information ("Software Documentation"), so long as Customer has paid TSI the applicable license fees for the software.

b. **Other Software License Terms.** Other software license terms may apply for some software products available from TSI. The additional terms of the other licenses will be set out in the price list, within the Software Documentation, or as a separate written license included with the applicable software.

c. **Limitations.** Customer may modify software (but not firmware), or combine it with other software, but only to the extent permitted by the Software Documentation and subject to the provision that those portions of other applications which incorporate the software will be subject to the restrictions of this license. Software that is modified by Customer will not be covered by any warranty, including the limited warranty described in section 8 herein. Customer may not permit any item of software, related modifications, or Software Documentation to be disclosed to or used by any person other than Customer's employees or agents, or with any equipment other than hardware or equipment for which it is licensed, without TSI's prior written permission. Customer may not duplicate any portion of the software except for archival purpose or for installation purposes as expressly described by the Software Documentation, and shall duplicate TSI's proprietary rights notices on any such copy. Customer may not translate, decompile, disassemble, use for any competitive analysis, or reverse resource the software or Software Documentation, in any way.

### **3. Services.**

a. **Service Description.** Customer's Order for service will be according to the terms of TSI's service description in effect on the date of the Order or as otherwise mutually agreed in an Order. Service descriptions are available from TSI on request.

b. **Maintenance Services.** To be eligible for maintenance services, the Customer's hardware must be in good operating condition at current specified revision levels. TSI may charge its standard rates in effect when on the Order is placed to make hardware eligible for maintenance services.

c. **Relocation.** Relocation of products is Customer's sole responsibility and may result in adjustments to service charges and changes to service response times. If products are relocated outside of the continental United States, their continued service will also be subject to reasonable availability of a TSI authorized service provider/partner.

d. **Security, Working Conditions.** Customer is responsible for the security of its proprietary and confidential information and for maintaining a procedure external to the products to reconstruct lost or altered Customer files, data or programs. Customer agrees to have its representative present when TSI provides services. Customer agrees to notify TSI if products are being used in an environment which poses a potential health hazard to TSI's employees or agents.

e. **Services Furnished by Agents.** Services may be furnished by TSI or for TSI by TSI's agent, or a TSI authorized support provider.

f. **Replaced Parts.** All replaced parts will become the property of TSI on an exchange basis, whether replaced during warranty or maintenance coverage periods.

g. **Spare Parts and Other Material.** Diagnostics, documentation, spare parts, tools, test equipment and other material used in the performance of installation, warranty, maintenance or professional services may be furnished by TSI, provided with products, or stored at Customer's facility. TSI grants no title or license to such material and such products remain the exclusive property of TSI. Customer agrees to promptly return all such materials to TSI upon TSI's request.



#### **4. Shipment, Changes, Title, Risk of Loss.**

- a. *Shipment.* TSI will ship products by a method and carrier selected by TSI unless otherwise instructed in Customer's Order.
- b. *Changes.* Customer cannot cancel or reschedule any order in whole or in part fifteen (15) days or less prior to the acknowledged delivery date or after delivery.
- c. *Returns.* Products received by Customer as a result of an error by TSI in shipment may be returned for credit. Products with defects covered manufacturer's warranty may be returned for repair under the warranty. Customer agrees to first obtain from TSI or individual manufacturer the appropriate return material authorization number ("RMA #") and return the product within ten (10) days after receiving the RMA #.
- d. *Title, Security Interest, Risk of Loss.* Title to hardware will pass to Customer when presented by TSI or its agent to the carrier at which point Customer is responsible for the risk of all loss, damage, or theft. TSI will retain and Customer grants a purchase money security interest in each of the products, and in any replacement, addition or proceeds, in the amount of its purchase price until paid in full. If TSI requests, then Customer agrees to promptly execute and return for filing any documents, such as a UCC Financing Statement, needed to perfect TSI's security interest. TSI is permitted to file a copy of this Agreement with any such filing.

#### **5. Fees and Billing.**

- a. *Fees.* Customers shall pay all fees due according to the Order, which will reflect any applicable discount. If not otherwise indicated on an Order, fees shall be those contained on TSI's service list or price list, current at the time of the Order. All product prices shall be F.O.B. point of shipment within the United States. Customer agrees to pay all transportation and insurance costs when set forth separately on TSI's invoice.
- b. *Payment by Credit Card.* Payments made by credit card are subject to a 3.0% processing fee.
- c. *Billing and Payment Terms.* The payment terms in the Order shall control. If the Order does not contain such terms, subject to credit approval by TSI, payment will be due as follows: 50% shall be due upon TSI's acceptance of the Order, and the net shall be due at delivery of products or at the inception of the provision of services, except that: support agreements must be fully funded at the time of purchase. Payment for consulting service less than forty hours not performed pursuant to an Order (i.e. emergency service) is due in full, in advance of such service being provided. Payment for consulting service over forty hours will be due in forty hour increments, and in advance of such services being provided. All payments must be made in U.S. dollars. Late payments hereunder will accrue interest at a rate of 1 ½% per month, or the highest rate allowed by applicable law, whichever is lower.
- d. *Taxes.* All payments required by this Agreement exclude all sales, value-added, use, or other taxes and obligations, all of which Customer will be responsible for and will pay in full, except for taxes based on TSI's net income.
- e. *Tariffs.* Tariff and Duties of up to 25% may be assessed for imported components per the United States Trade Representative (USTR) Section 301 HTS Codes as apply until further notice. Duties will be applied and accessed on a paid when paid basis.
- 6. *No Resale.* Products and services are for use by Customer only and not for resale to any third party, unless expressly authorized by TSI.
- 7. *Confidential Information.*
  - a. *Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products. ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and customer information. Each party shall not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information, and shall take reasonable precautions to protect the confidentiality of such information.
  - b. *Exceptions.* Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

#### **6. No Resale.**

Products and services are for use by Customer only and not for resale to any third party, unless expressly authorized by TSI.

#### **7. Confidential Information.**

- a. *Confidential Information.* Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, plans, customers, technology, and products. ("Confidential Information"). Confidential Information will include, but not be limited to, each party's proprietary software and customer information. Each party shall not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's Confidential Information, and shall take reasonable precautions to protect the confidentiality of such information.
- b. *Exceptions.* Information will not be deemed Confidential Information if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.



#### **8. Limited Warranty.**

a. *Product Warranty.* For each specific product, the warranty period will that warranty set out in the price list. TSI warrants to Customer that each item of hardware will be free from defects in workmanship and materials for its respective warranty period, which shall begin on the date of delivery or, if installed by TSI, on the installation date. Customer's sole remedy and TSI's sole obligation under this warranty shall be for the prompt repair or replacement of any component with defects in workmanship or materials while the product is covered by the manufacturer's stated warranty.

b. *Warranty Period for Products.* The warranty period for each product is specified in: (i) TSI's price list that is in effect on the date TSI receives Customer's Order, unless Customer has purchased from TSI a maintenance support option which supersedes the product's warranty; or (ii) the stated warranty supplied with the product by the product's manufacturer. TSI reserves the right to change the warranty period with such changes only affecting orders placed after such change.

c. *Software Warranty.* For software furnished under TSI's standard software license terms, TSI warrants that each item of software, as delivered or updated by TSI and properly installed and operated on the equipment it is licensed for, will function substantially as described in its then-current Software Documentation for its respective warranty period, commencing on the installation date. If any item of software fails to so perform during its warranty period, as the Customer's sole remedy, TSI will, in its discretion, either provide: (i) a suitable "fix", "patch" or "workaround" for the problem; or (ii) a statement that the appropriate "fix" will be included in a future revision or upgrade of the software, and identifying the time period that it is expected to be issued. The warranty for software furnished with other licenses will be provided to Customer with a copy of such licenses.

d. *Service Warranty.* TSI warrants to Customer that services will be performed in a professional and workman like manner.

e. *Limitations.* TSI does not warrant that any item of software is error-free or that its use will be uninterrupted. TSI shall not be obligated to remedy any software defect which cannot be adequately repeated. The warranties in this section 8 do not apply to any product which has been: (i) altered, except by TSI or in accordance with 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. Replacement parts furnished under this warranty may be refurbished or contain refurbished components.

*TSI DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. TSI DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF, AND CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS. ANY PRODUCT THAT MAY BE FURNISHED BY TSI WHICH IS NOT LISTED IN AN ORDER IS FURNISHED "AS IS".*

#### **9. Limitations of Liability.**

a. *Exclusions.* TSI will not be liable to Customer for any lost revenue, lost profits, replacement goods, loss of technology, rights or services, incidental, punitive, indirect or consequential damages, loss of data, or interruption of Customer's business, even if TSI is advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise. Customer hereby acknowledges that should it fail to backup its data in a commercially reasonable manner, that failure shall constitute the sole actual and proximate cause of any data loss that the Customer experiences, whether due to the actions or inactions of TSI or otherwise.

b. *Maximum Liability.* TSI'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER RELATED TO OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER TO TSI HEREUNDER FOR THE PRIOR 12 MONTH PERIOD, EXCEPT AS PROVIDED IN SECTION 10.



#### **10. Patent and Copyright Actions and Indemnification.**

- a. *Obligation to Defend.* TSI will, at TSI's expense, defend any action brought against Customer that is based on a claim of U.S. copyright or patent infringement by any program provided to Customer by TSI and used within the scope of this Agreement and all applicable Software Documentation. Customer must promptly inform TSI, in writing, of any claim and allow TSI to control the defense of such action and agree to any settlement of claims proposed by TSI.
- b. *Liability.* TSI will pay all damages and costs awarded, or that result from TSI's settlement of claims, in any action satisfying the conditions described in Subparagraph 10. a.
- c. *Right to Alter or Discontinue.* If any software provided in connection with the Agreement is, or, in TSI's opinion, is likely to be, the subject of a copyright or patent infringement claim, TSI may: (i) obtain the right to continue using the programs; or (ii) replace or alter the programs to make them non-infringing.
- d. *Limitation of Liability.* TSI has no liability for patent or copyright infringement claims based on:
- (i) use of other than the latest, unaltered version of any program provided in the connection with the Agreement if the infringement would have been avoided by use of the latest, unaltered version; or
- (ii) use or combination of a program provided in connection with the Agreement with programs or data not owned or supplied by TSI if the infringement would have been avoided by use or combination solely of programs provided under this Agreement. The provisions of this Paragraph 10 set out TSI's entire liability for patent or copyright infringement.

#### **11. Term and Termination.**

- a. *Term.* This Agreement will be effective commencing on the date that Customer accepts an Order or otherwise accepts products or services of TSI under this Agreement, and shall continue thereafter for the term set forth on any applicable Order unless and until terminated according to the provisions of this Section 11. The Agreement will automatically renew for additional terms of one year each unless either party provides written notice of its intent not to renew at least thirty days prior to expiration of the then-current term.
- b. *Termination.*
- (i). *For Convenience.* Either party may terminate this Agreement for convenience upon written notice at any time during which no Order is in effect.
- (ii). *For Cause.* Either party will have the right to terminate this Agreement, or an applicable Order, if the other party breaches any material term or condition of this Agreement and fails to cure such breach within 30 days after receipt of written notice of the same, except in the case of failure to pay fees, for which TSI may immediately terminate this Agreement at its discretion. Either party may terminate this Agreement if: (i) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (ii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.
- c. *Effect of Termination.* Upon the effective date of expiration or termination of this Agreement: (i) TSI may immediately cease providing products and services hereunder; (ii) any and all payment obligations of Customer under this Agreement will become due immediately; and (iii) within 30 days after such expiration or termination, each party shall return all Confidential Information of the other party in its possession at the time of expiration or termination and shall not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.
- d. *Survival.* Any expiration or termination of this Agreement shall not modify or alter any of the obligations of the parties which accrued prior to such expiration or termination. The sections of this Agreement which would, by their nature, continue beyond the termination of this Agreement shall survive any termination or expiration of this Agreement. Section 2 shall also survive any termination or expiration provided Customer continues to comply with the provisions of the applicable license terms and Software Documentation.
- e. *No Liability for Termination.* Neither party will be liable to the other for any termination or expiration of this Agreement in accordance with its terms.



## **12. Miscellaneous Provisions.**

a. *Force Majeure.* Except for the obligation to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, or governmental act, provided that the delayed party: (a) gives the other party prompt notice of such cause; and (b) uses commercially reasonable efforts to correct promptly such failure or delay in performance.

b. *Non-Solicitation.* During the period beginning on the date hereof and ending on the first anniversary of the termination or expiration of this Agreement in accordance with its terms, Customer shall not, and shall ensure that its affiliates and agents do not, directly or indirectly, solicit or attempt to solicit for employment any persons employed by TSI during such period.

c. *Relationship of Parties.* TSI and Customer are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between TSI and Customer. Neither TSI nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein.

d. *Entire Agreement.* This Agreement, including all documents incorporated herein by reference, constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written and oral, regarding such subject matter.

e. *No Assignments.* This Agreement and licenses issued hereunder may not be assigned, sublicensed, or transferred in any way by Customer, except as provided herein or otherwise without TSI's prior written consent.

f. *Binding Effect.* The provisions of this Agreement shall be binding upon and shall inure to the benefit of, and apply to the respective heirs, executives, administrators, successors and permitted assigns of the parties hereto.

g. *Governing Law and Equitable Relief.* This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of Missouri and TSI and Customer consent to the exclusive jurisdiction of the state courts of the State of Missouri in St. Louis County and the United States Federal Court for the Eastern District of Missouri for any dispute arising under this Agreement. TSI and Customer agree that in the event of any breach or threatened breach by Customer, TSI may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect TSI against any such breach or threatened breach. The parties hereby stipulate and agree that a bond in the principal amount of One Thousand Dollars (\$1,000) shall be sufficient protection in the event that a court enters a restraining order or orders injunctive relief.

h. *Waiver of Jury Trial.* IN THE EVENT OF ANY LITIGATION TO ENFORCE OR INTERPRET ANY PROVISIONS OF THIS AGREEMENT, TSI AND CUSTOMER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY SUCH LITIGATION ARISING OUT OF THIS AGREEMENT OR LICENSE ISSUED HEREUNDER, OR OUT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (VERBAL OR WRITTEN), OR ACTIONS OF TSI OR CUSTOMER RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT.

i. *If TSI Global Companies, LLC's time to perform work is extended or delayed due to foreseeable or unforeseeable pandemics such as coronavirus (provisionally named SARS-CoV-2, with its disease being named COVID-19) including, without limitation, labor, parts, equipment, or material shortages. To the extent TSI and/or its vendors or subcontractors expend additional time or costs related to conditions or events set forth in this provision, including without limitation, expedited shipping, hazard pay associated with site conditions, additional PPE requirements, additional time associated with complying with social distancing or hygiene requirements, or additional access restrictions, the contract sum shall be equitably adjusted.*