

ELO TOUCH SOLUTIONS PURCHASE ORDER TERMS & CONDITIONS

These Elo Touch Solutions Purchase Order "Terms and Conditions" are incorporated into and made a part of the purchase order ("PO") between the parties. As used herein, "Elo" means Elo Touch Solutions, Inc. (including its affiliates) and "Seller" means the seller (including its affiliates) identified in the PO. In the event any term of any agreement, including any Seller purchase order, invoice or quotation, between Seller and Elo conflicts with these Terms and Conditions, these Terms and Conditions shall govern. Seller and Elo hereby agree as follows:

1. **SERVICES & DELIVERABLES.** Seller agrees to perform the services ("Services") and/or provide the goods and deliverables (collectively referred to as "Goods"), described in the PO, in accordance with the PO and these Terms and Conditions. Upon acceptance of the PO, shipment of Goods, or commencement of a Service, Seller shall be bound by the provisions of these Terms and Conditions. Any term or condition in any Seller purchase order, confirmation or other document furnished by Seller which is in any way inconsistent with, or in addition to, the Terms and Conditions is hereby expressly rejected, and shall be superseded by these and Conditions. The PO and these Terms and Conditions are expressly limited to, and expressly made conditional on, Seller's acceptance of the PO and these Terms and Conditions.
2. **DELIVERY & ACCEPTANCE.** Seller's delivery of Goods shall be made pursuant to the schedule or dates identified in the PO, or as agreed to by the parties in writing, via the carrier and to the place or destination specified in the PO. Elo shall have a reasonable period of time after receipt of the Goods and before payment to inspect the Goods for conformity hereto. Goods shall not be deemed accepted until Elo has run an adequate test to determine whether the Goods conform to the specifications hereof. If Goods tendered do not wholly conform to the provisions hereof, Elo shall have the right to reject such Goods.
3. **PAYMENT.** As full consideration for the performance of Services and delivery of Goods as provided herein, Elo shall pay Seller the amount (in the currency) specified in the PO and any required sales tax on such purchase pursuant to Seller's monthly invoice. Unless specified otherwise in the PO, Elo's payment shall be due within sixty (60) days of each such invoice. Seller will pay all bank charges, or transfer or miscellaneous taxes, duties, levies and other costs and commissions associated with nonstandard methods of invoicing and payment. Seller is solely responsible for paying all required taxes, (including, but not limited to, property, or excise taxes with respect to the provision of Goods) except for any sales tax or income tax assessed upon Elo. Where Elo is required by law to pay withholding tax, Elo will make payment to Seller less such withholding tax and account to the relevant tax authority.
4. **WARRANTIES.**
 - a. **Goods.** Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications for a period of three (3) years from the date of delivery to Elo.
 - b. **Services.** Seller warrants that all Services shall be completed in a professional, workmanlike manner, with the degree of skill and care that is required by others of similar quality to Seller's business. Further, Seller represents and warrants that the Services shall be completed in accordance with applicable specifications and shall be correct and appropriate for the purposes contemplated in these Terms and Conditions. Seller represents and warrants that the performance of Services under these Terms and Conditions will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction to which Seller is bound.
 - c. **Insurance.** Each party agrees to keep in full force and effect) comprehensive general liability insurance with a combined single limit in an amount not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate (or equivalent coverage under an "umbrella" policy), including comprehensive form premises and operations, independent contractors, products and completed operations, personal injury, contractual, and broad form property damage liability coverage. The parties agree that upon request, they will deliver to each other the applicable certificates of insurance naming the other party as an additional insured and will reasonably endeavor to notify the other prior to any termination, expiration or change in coverage provided thereunder.
5. **INDEMNITY.** Seller shall indemnify, hold harmless, and at Elo's request, defend Elo (including its affiliates) and their respective officers, directors, agents and employees, against all claims, liabilities, damages, losses and expenses, including reasonable attorneys' fees and costs arising out of any claim based on: (a) a negligent act or omission or willful misconduct of Seller; (b) a violation of applicable law; (c) a breach by Seller of these Terms and Conditions; or (d) a third party alleging that the Goods or Services, the results of such Services, or any other products or processes provided under these Terms and Conditions, infringe a patent, copyright, trademark, trade secret or other proprietary right of a third party. Seller shall not settle any such suit or claim without Elo's prior written approval.
6. **CONFIDENTIALITY.** Seller may acquire Elo Confidential Information (defined below) in connection with its performance hereunder and agrees to keep such Elo Confidential Information in confidence during and following termination or expiration of these Terms and Conditions. "Elo Confidential Information" means all proprietary and non-public information, and information that by its nature is reasonably expected to be confidential and that is disclosed to Seller by Elo, whether in written, oral, electronic, or other form including, but not limited to, inventions, prototypes, computer programs, ideas, data, designs, sketches, product concepts, benchmark and business and financial information, and any summaries or portion thereof. Elo Confidential Information does not include information which: (a) is publicly available prior to the time of disclosure; (b) becomes publicly available to Seller after disclosure through no fault of, or breach of these Terms and Conditions by, Seller; (c) is in the possession of Seller at the time of disclosure; (d) is obtained by Seller from a third party who is not bound by a confidentiality restriction; or (e) is independently developed by Seller without use of or reference to Elo Confidential Information.

Seller agrees not to copy, alter or directly or indirectly disclose any Elo Confidential Information to any third party; provided, Seller may disclose Confidential Information which is required to be disclosed pursuant to a requirement of a government agency or law so long as Seller provides prompt notice to Elo of such requirement prior to disclosure. Seller agrees to limit its internal distribution of Elo Confidential Information to Seller's employees or contractors who have a need to know, and are obligated to Seller to maintain Elo Confidential Information under confidentiality terms no less protective than those contained herein. In no event will Seller use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of Elo Confidential Information. Seller will not use Elo Confidential Information except in the course of performing hereunder and will not use Elo Confidential Information for its own benefit or for the benefit of any third party. All Elo Confidential Information is and

shall remain the property of Elo. Upon Elo's written request or the termination of these Terms and Conditions, Seller shall return to Elo all Elo Confidential Information and all copies thereof.

7. **TERM AND TERMINATION.** Unless specified otherwise in the PO, these Terms and Conditions will be in effect from the date of delivery of the Goods or start of the Services (whether in part or whole) and continue for a period of one (1) year. This writing does not constitute a firm offer within the meaning of Section 2205 of the California Commercial Code, and may be revoked at any time prior to acceptance. Elo hereby reserves the right to reschedule any delivery, or cancel the PO with respect to standard Goods (i.e., not "custom" product), at any time prior to shipment of the Goods or prior to commencement of any Services. Elo shall not be subject to any charges or other fees as a result of such cancellation. In the event Seller fails to deliver the Goods within the time specified, if any, Elo may, at its option, decline to accept the Goods and terminate these Terms and Conditions or may demand its allocable fair share of Seller's available Goods and terminate the balance of these Terms and Conditions. Elo may terminate these Terms and Conditions immediately upon written notice to Seller if Seller fails to perform or otherwise breaches these Terms and Conditions, files a petition in bankruptcy, becomes insolvent, or dissolves. Elo may terminate these Terms and Conditions, or any Service(s), for any other reason upon thirty (30) days' written notice to Seller.
8. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ELO (INCLUDING ELO'S AFFILIATES) BE LIABLE TO SELLER, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THESE TERMS AND CONDITIONS, OR BE LIABLE IN THE AGGREGATE FOR ANY AMOUNT IN EXCESS OF THE AMOUNTS PAID OR PAYABLE BY ELO UNDER THESE TERMS AND CONDITIONS WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT THE PARTY SEEKING A REMEDY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
9. **FORCE MAJEURE.** Elo shall not be liable for any failure to perform including failure to (a) accept performance of Services or, (b) take delivery of the Goods as provided caused by circumstances beyond its control which make such performance commercially impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment or transportation. In the event Elo is so excused, either party may terminate these Terms and Conditions and Elo shall at its expense and risk, return any Goods received to the place of shipment.
10. **MISCELLANEOUS.**
- a. **Independent Contractors.** Seller will not be an employee of Elo but, rather, will have the status of an independent contractor and nothing herein will be deemed to place the parties in the relationship of employer-employee, principal-agent, partners or joint venturers.
- b. **No Assignments.** Seller may not assign these Terms and Conditions or any of its rights or obligations under these Terms and Conditions, without the prior written consent of Elo. Any assignment or transfer without such written consent shall be null and void. These Terms and Conditions shall inure to the benefit of, and be binding upon, the successors and assigns of Elo without restriction. A waiver of any default hereunder or of any term or condition of these Terms and Conditions shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.
- c. **Modifications.** All additions or modifications to these Terms and Conditions must be made in writing and must be signed by the Parties.
- d. **No Waiver.** Any failure of a party to enforce any provision of these Terms and Conditions shall not be deemed a waiver of that or any other provision of these Terms and Conditions.
- e. **Construction.** If any provision contained in these Terms and Conditions is determined to be invalid or unenforceable as a whole or in part, the remaining provisions and any partially enforceable provision will be binding and enforceable, and the parties agree to substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of such invalid provision.
- f. **Applicable Law.** These Terms and Conditions shall be construed and interpreted in accordance with the laws of the state of California, USA, excluding its rules for choice of law. The state and federal courts located in Santa Clara, CA shall have exclusive jurisdiction and venue of all matters that related to or arise from the subject matter of these Terms and Conditions. Notwithstanding the foregoing, nothing herein prevents Elo from applying to the courts of any country for injunctive or other equitable relief to prevent or curtail any breach of these Terms and Conditions.
- g. **Survival.** Sections 6, 8 and 10 (as applicable) shall survive the expiration or termination of these Terms and Conditions.
- h. **Counterparts.** These Terms and Conditions may be signed in counterparts, including by electronic signature, each of which shall be considered an original.
- i. **Notices.** All notices, demands or consents required or permitted hereunder shall be delivered in writing to the addresses set forth in the PO (or other address provided in writing to the other side), and, to Elo, to the attention of the General Counsel.