

Touch Home Automation - Standard Terms and Conditions

Any contract of sale between TOUCH HOME AUTOMATION CC ("THE SELLER") AND ITS CUSTOMER ("THE CLIENT") shall be subject to these standard Terms and Conditions. These conditions supersede any standard terms or conditions printed on or referred to in any order or document issued or to be issued by THE CLIENT which THE SELLER shall be entitled to ignore.

1 ACKNOWLEDGEMENT

It is acknowledged that THE CLIENT's products upon which this agreement is supplied has been acquired from a source other than THE SELLER and consequently no claim shall lie against THE SELLER in respect of any losses, which THE CLIENT might suffer after installation.

2 PRICE, PAYMENT AND INTEREST

- 2.1 Unless otherwise stated, all prices are net, and exclude any General Sales Tax, Value-added or other tax, import duty, levy or variation thereof, all of which shall be borne by THE CLIENT. Payment must be made by THE CLIENT to THE SELLER without deduction, set off or demand at THE SELLER's address or directly deposited into THE SELLER's Bank Account.
- 2.2 The contract price quoted in this agreement is based on current supplier's prices, stockholding and exchange rates. It is agreed that should there be a subsequent price increase, THE SELLER shall be entitled to increase the contract price during the term of this agreement from time to time. When possible notice of such increases shall be sent to THE CLIENT via email to the email address reflected for THE CLIENT in paragraph 7 below.
- 2.3 Any credit facility allowed by THE SELLER to THE CLIENT shall be at the discretion of THE SELLER who may, at any time, terminate or curtail such facilities. Unless THE SELLER has agreed or stipulated otherwise in writing, payment must be made as per THE SELLER standard schedule of payment before work commences. This will be on presentation of invoice for each phase which will be determined by THE SELLER.
- 2.4 Any changes made by THE CLIENT to the original quotation/design specification may affect the payment schedule or method.
- 2.5 Payment shall be deemed to have been made once the full amount deposited into THE SELLER's bank account has been cleared by THE SELLER'S banks.
- 2.6 Unless otherwise agreed in writing, failure by THE CLIENT to make any payment on time shall at THE SELLER discretion null and void any special terms or discounts offered, and shall make the full amount of the contact due with immediate effect.
- 2.7 Interest shall accrue on any amount due to THE SELLER calculated from due date at 2.5 percent above the prime overdraft rate (which may be proved by a Certificate from THE SELLER'S Bank).

2 DELIVERY AND RISK

- 2.1 Unless otherwise agreed in writing, the goods shall be delivered at THE SELLER's option by road, rail or air.
- 2.2 Delivery shall be deemed to have taken place at THE SELLER's premises or upon the goods being handed over to the carrier who shall be deemed to be THE CLIENT's agent.
- 2.3 Risk of or loss or damage in respect of the goods shall be deemed to pass to THE CLIENT upon goods leaving THE SELLER's warehouse.
- 2.4 Any agreed delivery date shall be approximate. In the absence of an agreed delivery date, delivery shall be affected at THE SELLER's discretion. THE SELLER will incur no liability to THE CLIENT arising from any delay, failure or error in delivery.
- 2.5 Where it has been agreed that the relevant goods sold shall be delivered in more than one consignment: each consignment will be deemed to be a separate sale. THE CLIENT shall be liable to pay the price in respect of each consignment on due date; and the validity of the sale of any consignment shall in no way be affected if the sale of any other consignment falls through for any reason.
- 2.6 THE SELLER shall be entitled to withhold delivery and/or cancel any sale or unfulfilled order if at any time THE CLIENT is in arrears with any obligation including any debt owing to THE SELLER, irrespective of the cause of the obligation.
- 2.7 If THE SELLER is prevented from delivering any goods at the time stipulated for delivery, as a result of instructions or the fault of THE CLIENT, THE CLIENT shall be liable for all expenses incurred by THE SELLER in consequence, including for storing and handling.
- 2.8 Return of goods is at all times subject to THE SELLER's prior written consent and is conditional upon the goods being returned within 7 days of receipt, in their original state, in their original packaging and all transportation costs being for the account of THE CLIENT. A handling charge of up to 20% of the value of goods sold may, at THE SELLER's discretion, be levied upon any or all goods accepted for return.
- 2.9 THE SELLER reserves the right to levy a delivery charge on all goods delivered and such delivery charge shall be in accordance with THE SELLER's prevailing delivery charge rates from time to time.
- 2.10 Where any delivery includes the installation by THE SELLER of its goods an installation agreement may be required to be entered into between THE SELLER, THE CLIENT and/or any 3rd Party.

3 OWNERSHIP AND CESSION AS SECURITY

- 3.1 Notwithstanding delivery or the granting of credit, the ownership of all goods sold shall remain vested in THE SELLER until the full contract price shall have been paid in full by THE CLIENT to THE SELLER. It is consequently agreed that THE CLIENT shall not be entitled to transfer ownership in and to the items purchased in terms hereof until such time as full payment shall have been received by THE SELLER whether or not THE SELLER is aware that THE CLIENT has procured such items for onward delivery.
- 3.2 THE SELLER reserves the right at its sole discretion, and without notice to THE CLIENT to repossess any goods for which full payment is not been received.

4 EXCLUSION AND LIMITATIONS

- 4.1 No variation of any of the terms of any contracts, including these conditions, shall be of any force unless agreed to and committed to writing.
- 4.2 THE SELLER does not warrant or represent that the goods sold are fit for any particular purpose (whether or not THE SELLER is aware of the purpose to which THE CLIENT will be putting the goods), THE CLIENT being solely responsible to satisfy himself as to the fitness of the goods for the purpose intended. No statement, recommendation, advice or assistance given by THE SELLER shall detract from this provision, nor shall THE SELLER incur any liability if any such statement, recommendation, advice or assistance proves to be incorrect or inappropriate.
- 4.3 THE CLIENT shall have no claim against THE SELLER based on any alleged shortage, breakage, or defect in the goods sold or the goods not being delivered in accordance with the contract, unless THE CLIENT shall have given notice in writing of its complaint to THE SELLER within 48 Hours after delivery of the goods and THE SELLER shall have permitted a reasonable opportunity to inspect the goods and rectify the shortage, breakage or defect. Unless agreed in writing by THE SELLER a claim by THE CLIENT for any costs or rectification of any shortage, breakage or defect by THE CLIENT or a third party will not be accepted.
- 4.4 THE CLIENT shall have no claim against THE SELLER for any delay in delivery or failure to deliver the goods sold or failure to perform any of its obligations as a result of force majeure, including, but not limited to, any strike, lock-out, labour unrest, act of war, civil disturbance, shortage or non-availability of raw materials, machinery breakdown, governmental interference or any other circumstances outside THE SELLER's control or as a result of any other reasonable cause.
- 4.5 Any claim by THE CLIENT against THE SELLER shall be limited to the cost of repair or replacement of faulty goods or services or to the granting of credit in the value of the item returned, at the sole discretion of THE SELLER. THE CLIENT shall return any faulty goods to THE SELLER.

5 WARRANTY

- 5.1 Warranty is subject to manufacturer's terms and conditions. Any warranty provided by product suppliers or THE SELLER is subject to manufacturer's warranty.
- 5.2 All warranties provided by THE SELLER are offer within a maximum of 50 kilometer radius from the THE SELLER place of business, and are exclusive of any levies, tolls, freight cost, duties or taxes. Warranties outside the 50 kilometer radius are subject to additional cost which the THE SELLER's shall provide should THE CLIENT lodge a warranty claim.
- 5.3 THE SELLERS workmanship is guaranteed for a period of 6 months from date of first phase completion. This warranty explicitly excludes maintenance work and is subject to clause 5.2.
- 5.4 THE CLIENT acknowledges that he/she has been advised about lighting and surge protection devices, and has/will install the require protection device.
- 5.5 THE SUPPLIER may in it sole discretion void any warranty should THE CLIENT account be in arrears or remain unpaid.

6 JURISDICTION AND COSTS

- 6.1 THE CLIENT consents to the jurisdiction of the Magistrate's Court (notwithstanding that the value of the claim may otherwise be beyond the jurisdiction of that court) or at THE SELLER's option, of the Supreme Court of South Africa in respect of any matter or claim arising from the sale.
- 6.2 The law of THE SELLER's domicile shall apply to the interpretation and enforcement of any contract and to any dispute between the parties.
- 6.3 THE CLIENT shall refund to THE SELLER all legal costs on the attorney and client scale incurred by THE SELLER recovering any amount due. Such costs shall include any collection commission payable by THE SELLER to its attorneys.

7 GENERAL

- 7.1 Cancellation of the contract in full or in part by THE CLIENT will result in a cancellation fee of up to 50% of the contract value or cancelled value be charged by THE SUPPLIER.
- 7.2 Products or services which fall outside the scope of this contact can be billed to THE CLIENT by THE SELLER's at THE SELLER's discretion. This includes but is not limited to briefing THE CLIENTS contractor multiple times on the same issues or managing contractors in the absences of THE CLIENT or THE CLIENTS project managers.
- 7.3 From the thirteenth month of any project not signed off by both parties, THE SUPPLIER reserves the right at its sole discretion to either,
 - 7.3.1 cancel the contact and change THE CLIENT a cancellation fee of 25% of the contract value,
 - 7.3.2 charge THE CLIENT a monthly management fee of 1% of the total quoted project price. This amount is in addition to any other services quoted for or billed by THE SUPPLIER.Where this agreement is signed after work has commenced the commencement date is agreed to be the date on which THE SUPPLIER first received payment from THE CLIENT.
- 7.4 All travel arrangements including but not limited to Visa, Air Travel, Accommodation, Hire Cars etc are for THE CLIENTS account. Should THE CLIENT elects to completed theses arrangements him/her self, THE CLIENT will complete and pay in full for these bookings a minimum of three weeks in advance, and deliver proof to THE SUPPLIERS place of business. THE SELLER shall in it sole discretion be entitled to ignore any travel arrangements not completed in time.
- 7.5 The invalidity of any portion of this agreement will not affect the validity of any other paragraph.
- 7.6 No amendment and/or alteration and/or variation and/or deletion and/or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and affect unless reduced to writing and signed by THE CLIENT and a Member of THE SELLER.
- 7.7 THE SELLER shall, at any time, in its sole discretion, be entitled to cede all or any of its right in terms of any credit facilities granted to THE CLIENT to any 3rd party without prior notice to THE CLIENT.

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- 7.8 THE CLIENT agrees to update both the personal and business information supplied in writing and within 7days of any change, failing which THE CLIENT will be liable for any inaccuracies and/or costs incurred.
- 7.9 THE CLIENT shells not cede their rights nor assign his obligation contained herein unless THE SELLER agrees in writing to such cession or assignment.
- 7.10 The CLIENT chooses Domicilium Citandi et Executandi for all purposes arising out of this application at the physical address of the installation listed below.

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- 7.11 THE CLIENT chooses the email address below for all correspond relating to this contact.

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- 7.12 Any latitude, extension of time or other indulgence which THE SELLER may extent to THE CLIENT will not operate as a waiver of rights in term of this agreement.