

Terms and Conditions of Sale

These terms and conditions of sale (“**Terms**”) apply to all orders accepted and all sales made by Elo Touch Solutions, Inc. (including its subsidiaries, “**Elo**”), including, without limitation the sale of the Products listed in a product quotation, order acceptance or invoice issued by **Elo** to which these Terms are appended or which reference these Terms or any other orders of Elo Products (“**Order**”), unless otherwise approved by Elo in writing. “**Buyer**” means an entity ordering the Products from Elo or an Elo authorized distributor or reseller. Buyer and Elo shall be referred to collectively as the “**parties**” and each individually as a “**party**”.

1. GENERAL: (a) The Terms constitute the sole and entire agreement between Elo and Buyer with respect to the sale of the Products and the subject matter hereof. Any term or condition in any order, purchase order, confirmation or other document furnished by Buyer or Elo which is in any way inconsistent with, or in addition to, the Terms is hereby expressly rejected, and shall be superseded by these Terms, unless signed by both parties. Buyer undertakes to purchase all Products listed in the Order by any deadline set forth therein and subject to monthly minimum order quantities set forth therein, if any. The parties agree that the governing language of a purchase of Products shall be English, unless otherwise agreed to by Elo. Elo may condition the acceptance of a blanket Order upon the commitment by Buyer to a delivery schedule.

(b) Definitions. “**Component**” means a touch screen, touch controller or touch driver that cannot be used stand-alone and must be embedded in a Product or similar product to function. “**Product(s)**” means computer hardware and any other products provided hereunder which may include Software (as defined below). “**Service(s)**” means any and all services provided by Elo as set forth in one or more written services agreement agreed to by the parties. “**Software**” means any software, library, utility, tool or other computer or program code provided by Elo to Buyer, whether installed locally on the Product hardware or otherwise accessed by Buyer through the internet or other remote means (such as websites, portals and cloud-based solutions), including any related documentation. “**Materials**” means all content and other items included with or as part of the Products, Software or related deliverables, tangible or intangible, including reports, studies, base cases, drawings, findings, manuals, procedures and recommendations prepared by Elo or its suppliers, licensors or subcontractors in the course of performing any Services or otherwise, text, graphics, logos, button icons, images, audio clips, information, data, photographs, graphs, videos, typefaces, music, sounds and software. “**Third Party Products**” means any non-Elo-branded products, Software or services sold by Elo to Buyer or made available to Buyer in conjunction with any Product.

2. PRICES AND PAYMENT TERMS: The sale price(s) of the Products are as set forth in the invoice or in the applicable Elo price list and are subject to change. Payment terms shall be net thirty (30) days from date of invoice and shall be in U.S. Dollars, unless otherwise set forth in the invoice or agreed to by Elo in writing. If Buyer purchases a multi-year Software license and related support and/or maintenance, and Elo and Buyer (or if applicable, the third-party licensor if a Third Party Product) agree to annualize Buyer’s purchase over the term of the license, Buyer shall make all annual payment in full and such purchase is non-cancellable over the term of such license. Any invoiced amount which is not paid when due shall bear interest at the rate of one and one-half percent (1½%) per month or the highest rate then permitted by law, whichever is less, until paid in full. All quotations of Elo are subject to change at any time prior to acceptance of an order and expire forty-five (45) days from the date given. Unless agreed by Elo in writing, any service calls or other service work performed by Elo shall be at Buyer’s expense in accordance with Elo’s rates. The Product prices are not subject to trade or other discounts and do not include federal, state or local taxes applicable thereto. All such taxes shall be paid by Buyer unless Buyer provides Elo with evidence satisfactory to Elo of exemption from such taxes. If Elo is required by applicable law to collect such taxes, Elo will state such taxes on the invoice. In addition to any rights hereunder, Elo reserves the right to put shipments on hold, suspend or terminate any Services or refuse to license Software, if payment is not received by the due date of any invoice and until Elo receives such outstanding amounts. Buyer agrees that all invoices shall be deemed accurate unless Buyer notifies Elo of a bona fide error within thirty (30) days of the date of such invoice. In no event shall Buyer be entitled or permitted to offset, defer or deduct any amounts from the invoiced

amounts unless Elo determines they are erroneous following the notification process set forth above.

3. DELIVERY AND TITLE PASSAGE:

Taxes, shipping and handling and insurance charges are not included in the Product price, unless expressly set forth in a written Order confirmation from Elo. Title to the Product(s) (except title to Software) passes to Buyer from Elo upon shipment to Buyer. Shipping and delivery dates provided by Elo are provided as estimates only. If shipment of any Product is delayed at Buyer’s request, Elo may invoice Buyer for such Products, and Buyer shall reimburse Elo for any and all costs of storage incurred by Elo after the date that Elo is prepared to make shipment. Elo retains a security interest in all Products and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without limiting any of Elo’s other remedies at law or in equity. Buyer must notify Elo in writing within fourteen (14) days from a scheduled delivery date if Buyer believes that any part of the order is missing, erroneous or damaged. Buyer is responsible for loss or damage that occurs during shipping by a carrier selected by Buyer. Neither (i) the time, method, place or medium of payment provided for herein or any combination of the foregoing, nor (ii) the manner of consignment provided for, whether for or to the order of Buyer or its agent, will in any way limit or modify the rights of Elo, as the owner of the Products, to have control over and the right to possession of the Products until the title thereto passes to Buyer as provided for above. In the event that a bank has, by reason of credit extended to Buyer or for any other reason, an interest in the shipment, it is agreed that Elo may consign the Products to said bank through the usual channels; in each such case, the full right of ownership of and control over the shipment will remain in Elo until title passes to Buyer as provided herein. The terms “ownership” and “title” as used in these Terms mean full beneficial ownership of the Products, except the Software.

4. CONTINGENCIES: Elo shall not be liable for delay in performance or nonperformance of any of its obligations hereunder, in whole or in part, if such performance is rendered impracticable by the occurrence of any contingency or condition beyond the control of either Elo or Elo’s suppliers, including without limitation war, sabotage, embargo, riot or other civil commotion, failure or delay in transportation, act of any government or any court or administrative agency thereof (whether or not such action proves to be invalid), labor dispute, accident, fire, explosion, flood or other casualty, shortage of labor, fuel, energy, raw materials or machinery or technical failure. If any such condition occurs, Elo may allocate production and deliveries in any reasonable manner at its discretion. Elo may revise or discontinue a Product, Software or Service offerings at any time without prior notice to Buyer.

5. SOFTWARE AND SERVICES:

(a) Software is subject to the separate software license agreements accompanying the software, along with any product guides, operating manuals or other documentation included with the software media packaging or presented to Buyer during the installation or use of the Software, including any license terms with third parties related to Third-Party Products, such as any click-thru, EULAs or other acceptance methods, and Buyer agrees to be bound by such license agreement. To the extent that a Third-Party Product Software is offered by Elo in conjunction with the any Elo Product or Software and such Third-Party Software is subject to a third party license agreement, the use and support of such Third-Party Product shall be governed by the terms of such agreement between the third-party and Buyer and Elo shall have no obligations or liabilities in connection therewith. If no license terms accompany the Software, then subject to Buyer’s compliance with the terms set forth in these Terms, Elo hereby grants Buyer a personal,

nonexclusive license to access and use such Software only during the term of the license as identified in the Order or Materials and solely as necessary for Buyer to enjoy the benefit of the Software as stated in the applicable Order or Materials.

(b) Buyer may not copy, modify or create a derivative work, collective work or compilation of the Software, and may not reverse engineer, decompile or otherwise attempt to extract the code of the Software or any part thereof. Buyer may not (i) license, sell, assign, sublicense or otherwise transfer or encumber the Software, (ii) use the Software in a managed-services arrangement; (iii) use the Software in excess of the authorized number of licensed seats for concurrent users, sites or other criteria specified in the applicable Order or Materials; (iv) access the Software to monitor its availability, performance or functionality, or for any other benchmarking or competitive purpose; (v) attempt to use or gain unauthorized access to Elo or to any third party's networks or equipment; (vi) transmit unsolicited bulk or commercial messages; (vii) attempt to probe, scan or test the vulnerability of Software or a system, account or network of Elo or any of its customers or suppliers; (viii) interfere or attempt to interfere with service to any user, host or network; (ix) engage in fraudulent activity of any nature; or (x) permit or enable others to use or copy the Software or take any of the actions prohibited hereunder.

(c) Each license to Software will continue for the term stated in the Software license, unless otherwise terminated. Elo or a Third-Party Product provider may terminate any Software license immediately, including prior to the expiration of the term thereof, if (1) Buyer fails to make any payment when due; (2) Buyer is acquired by or merge with a competitor of Elo; (3) Buyer declares bankruptcy or are adjudicated bankrupt; or (4) a receiver or trustee is appointed for Buyer or substantially all of its assets.

(d) Elo may suspend, terminate, withdraw or discontinue all or part of the Services or Buyer's access to the Software (and third-party Software offered as a Third-Party Product) upon receipt of a subpoena or law-enforcement request, or when Elo believes, in its sole discretion, that Buyer has breached any term hereof or an applicable Software license agreement or are involved in any fraudulent, misleading or illegal activities. With respect to Software provided or otherwise made available to Buyer by Elo in connection with the Products or related Services, it may be necessary for Elo to perform scheduled or unscheduled repairs or maintenance or remotely patch or upgrade the Software, which may temporarily degrade the quality thereof or result in partial or complete outage of the Software or Product. Elo provides no assurance that Buyer will receive advance notification of such activities or that the Services or Software will be uninterrupted or error-free. Unless otherwise agreed to in writing between Buyer and Elo, any such interruption in the Software or delivery of Services shall not give rise to a refund or credit of any fees paid. BUYER AGREES THAT THE OPERATION AND AVAILABILITY OF THE SYSTEMS USED FOR ACCESSING AND INTERACTING WITH THE SOFTWARE, INCLUDING TELEPHONE, COMPUTER NETWORKS, CLOUD-BASED SERVICES AND THE INTERNET, OR TO TRANSMIT INFORMATION, CAN BE UNPREDICTABLE AND MAY, FROM TIME TO TIME, INTERFERE WITH OR PREVENT ACCESS TO OR USE OR OPERATION OF THE SOFTWARE. ELO SHALL NOT BE LIABLE FOR ANY SUCH INTERFERENCE WITH OR PREVENTION OF BUYER'S ACCESS TO OR USE OF THE SOFTWARE.

(e) Buyer hereby grants Elo, or a representative designated by Elo, the right to perform an audit of its use of the Software during normal business hours and agrees to cooperate with such audit and provide Elo with all records reasonably related to Buyer's use of the Software. The audit will be limited to verification of Buyer's compliance with these Terms.

(f) A portion of the Software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. THIS OPEN SOURCE SOFTWARE IS DISTRIBUTED IN THE HOPE THAT IT WILL BE USEFUL, BUT IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY REGARDING TITLE OR AGAINST INFRINGEMENT. IN NO EVENT SHALL ELO, THE COPYRIGHT HOLDERS, OR THE CONTRIBUTORS

BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

(g) In connection with Elo's performance of any Services, Buyer's use of the Software or any related Services, Elo or a third party provider may obtain, receive or collect data or information, including system-specific data (collectively, the "Data"). In such cases, Buyer grants Elo a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce or create derivative works of the Data solely for those purposes. In addition, Buyer grants Elo a license to aggregate and use the Data in an anonymous manner in support of Elo's marketing and sales activities. Buyer also grants Elo the right to copy and maintain such material and content on Elo's servers (or the servers of its suppliers) as long as such Software is used or services are provided. Buyer represents and warrants that it has obtained all rights, permissions and consents necessary to use and transfer the Data within and outside of the country in which you are located in conjunction with Elo's performance of the services or its use of the service-related Software (including providing adequate disclosures and obtaining legally sufficient consent from its employees, agents and contractors).

(h) Each Service and license to Software will continue for the term stated in the Service Agreement or the Software license, unless otherwise terminated. Elo may, at its sole discretion, propose to renew the Service and the Software license by sending you an invoice or, subject to prior notification, continuing to perform the Service or make the Software available to Buyer. Buyer may (if permitted under applicable law) agree to such renewal of the Service and Software license by paying such invoice by its due date or by continuing to order Services or use the Software.

6. LIMITED WARRANTY; SUITABILITY:

(a) Elo warrants to Buyer that the Products (the "Warranty") (x) shall be free of defects in materials and workmanship from the date of invoice for the period of time identified by Product on Elo's website at www.elotouch.com or in the Materials included with such Products (each a "Warranty Period"), and (y) shall be free of liens and encumbrances when shipped to Buyer. With respect to the Software, Elo warrants for sixty (60) days following the commencement of the Software license, that the Software will substantially conform to the published functional specifications and current documentation provided by Elo. A Buyer's exclusive remedy and Elo's sole liability for breach of the Software warranty herein, Elo will provide or cause others to provide technical support provided to Elo's other customers in connection with the Software during the term of the license. The Services will be performed by Elo in good and workmanlike manner. Elo's Warranty will not apply to any Product with respect to which there has been (i) improper installation or testing, (ii) failure to provide a suitable operating environment, external causes, such as accident, abuse, misuse, problems with electrical power (iii) use of the Product for purposes other than that for which it was designed, (iv) failure to monitor or operate the Product in accordance with applicable Elo specifications and good industry practice, (v) combination or use of any Product with software drivers, touch controllers, and or sensors or components that are not approved by Elo in writing, (vi) unauthorized attachment or removal or alteration of any part of the Product, (vii) unusual mechanical, physical or electrical stress, (viii) modifications, services or repairs done by anyone other than Elo or an Elo authorized service center, or (ix) any other abuse, misuse, neglect or accident. In no event shall Elo have any liability or obligation with respect to expenses, liabilities or losses associated with the installation or removal of any Product or the installation or removal of any components for inspection, testing or redesign occasioned by any defect or by repair or replacement of a Product (including to an equivalent or upgraded product). THESE WARRANTIES DO NOT APPLY TO THIRD-PARTY PRODUCTS. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL

MANUFACTURER. ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS." WITH RESPECT TO THE USE OF THE SOFTWARE OR SERVICES (1) ELO MAKES NO EXPRESS OR IMPLIED WARRANTY THAT SOFTWARE IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS; OR THAT ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED; (2) ELO DISCLAIMS AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS OR EFFECTIVENESS OF ANY REPORTS, DATA, RESULTS OR OTHER INFORMATION OBTAINED OR GENERATED BY BUYER RELATED TO BUYER'S USE OF THE SOFTWARE; AND (3) THE SOLE RECOURSE BUYER MAY HAVE HEREUNDER FOR VIOLATION OF ANY SOFTWARE RELATED WARRANTY IS TECHNICAL SUPPORT AND BUG FIXES PROVIDED UNDER THE MAINTENANCE SERVICES OFFERED WITH THE SOFTWARE. NOTHING IN THIS SECTION SHALL EXCLUDE OR LIMIT ELO'S WARRANTY OR LIABILITY FOR LOSSES THAT ARE EXPRESSLY PROHIBITED UNDER APPLICABLE LAW FROM BEING RESTRICTED OR LIMITED AS CONTEMPLATED HEREUNDER. AS SUCH, ONLY THE LIMITATIONS THAT ARE LAWFULLY APPLIED TO BUYER IN ITS JURISDICTION WILL APPLY TO IT, AND ELO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW TO BE WAIVED, LIMITED OR RESTRICTED BY BUYER AS CONTEMPLATED HEREUNDER.

(b) Buyer shall notify Elo in writing promptly (and in no case later than thirty (30) days after discovery) of the failure of any Product, Software or Service to conform to the warranty set forth above, shall describe in commercially reasonable detail in such notice the symptoms associated with such failure, and shall provide to Elo the opportunity to inspect such Products as installed, if possible. The notice must be received by Elo during the Warranty Period for such Product. Unless otherwise directed in writing by Elo, within thirty (30) days after receipt of such notice, Buyer will package the allegedly defective Product in its original shipping carton(s) or a functional equivalent and shall ship it to Elo at Buyer's expense and risk.

(c) Within a reasonable time after receipt of the allegedly defective Product and verification by Elo that the Product fails to meet the Warranty, Elo shall correct such failure by, at Elo's option, either (i) modifying or repairing the Product or (ii) replacing the Product with a substantially similar product. Such modification, repair or replacement and the return shipment of the Product with minimum insurance to Buyer shall be at Elo's expense. Elo may request payment for reimbursement of costs and expenses incurred by it for Products found to be "not defective" or performing at the levels specified in Elo's technical specifications. THESE REMEDIES SHALL BE BUYER'S EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, ELO (INCLUDING ITS AFFILIATES, CONTRACTORS, AND AGENTS AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS) GRANTS NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, (I) REGARDING THE PRODUCTS, SOFTWARE, SERVICES OR THEIR FITNESS FOR ANY PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, THEIR NONINFRINGEMENT, PERFORMANCE, RELATING TO THIRD-PARTY PRODUCTS, SOFTWARE OR SERVICES; (II) RELATING TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR ELO'S PERFORMANCE OF THE SERVICES; OR (III) REGARDING THE RESULTS TO BE OBTAINED FROM THE PRODUCTS, SOFTWARE, SERVICES OR THE RESULTS OF ANY RECOMMENDATION BY ELO OR OTHERWISE. NO EMPLOYEE OF ELO OR ANY OTHER PARTY IS AUTHORIZED TO MAKE ANY WARRANTY FOR THE GOODS OTHER THAN THE WARRANTY SET FORTH HEREIN. ELO'S LIABILITY UNDER THE WARRANTY SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT. IN NO EVENT SHALL ELO BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS BY BUYER OR FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES. NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF, ELO SHALL NOT BE OBLIGATED TO PERFORM ANY OF THE WARRANTY

OBLIGATIONS SET FORTH HEREIN IN THE EVENT THAT BUYER IS IN DEFAULT OF ITS PAYMENT OBLIGATIONS UNDER ANY ORDER.

(d) Buyer assumes the risk and agrees to indemnify Elo against and hold Elo harmless from all liability relating to (i) assessing the suitability for Buyer's intended use of the Products and of any system design or drawing and (ii) determining the compliance of Buyer's use of the Products and Software with applicable laws, regulations, codes and standards. Buyer retains and accepts full responsibility for all warranty and other claims relating to, or arising from, Buyer's products which include or incorporate Products, Software or components manufactured or supplied by Elo. Buyer will indemnify Elo and hold Elo harmless from any liability, claims, loss, cost or expenses (including reasonable attorneys' fees) attributable to Buyer's products or representations or warranties concerning same.

7. INDEMNITY: Elo agrees to settle or defend any suit or proceeding brought against Buyer insofar as such suit or proceeding is based on a claim that any Product constitutes direct infringement of any issued United States, European Union, Japan and Taiwan patents or any copyright or trade secret. Elo shall pay all damages and costs finally awarded therein against Buyer, provided Elo is informed by Buyer in writing within ten (10) days after receipt by Buyer and furnished a copy of each communication, notice or other action relating to the alleged infringement and is given all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend such suit or proceeding. In the event such Product or any part thereof is, in such suit, held to constitute infringement and the use of such Product or part thereof is enjoined, Elo shall, by its own election and at its own expense, either (a) procure for Buyer the right to continue using such Product, or modify it so that it becomes non-infringing or (b) remove such Product, or part thereof, and grant Buyer a credit thereon and accept its return. Elo shall not be obligated to settle or defend any suit or proceeding, or be liable for any costs or damages, if the alleged infringement arises out of compliance with Buyer's specifications or any addition to or modification of the Product after delivery thereof or from use of the Product or any part thereof in conjunction with other goods or in the practice of a process. Elo's obligations hereunder shall not apply to any alleged infringement occurring after Buyer has received notice of such alleged infringement unless Elo thereafter gives Buyer express written consent for such continuing alleged infringement. Elo shall not be bound in any manner by any settlement hereunder made without its prior written consent, which shall not be unreasonably withheld. If infringement is alleged prior to completion of delivery of a Product, Elo may decline to make further shipments without being in breach of this Agreement. THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF ELO FOR PATENT INFRINGEMENT AND IS IN LIEU OF ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN REGARD THERETO.

8. LIMITATION OF LIABILITY: NOTWITHSTANDING ANY OTHER PROVISION HEREIN OR IN ANY OTHER COMMUNICATION, (A) ELO'S LIABILITY AND OBLIGATIONS WITH RESPECT TO ANY CLAIM(S) RESULTING OR ARISING FROM OR RELATING TO THESE TERMS, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE SHALL IN NO EVENT EXCEED IN THE AGGREGATE THE TOTAL PURCHASE PRICE RECEIVED BY ELO FOR THE PRODUCTS, SERVICES AND/OR SOFTWARE OR, IN THE CASE OF OBLIGATIONS RELATING TO PARTICULAR PRODUCTS OR SERVICES RENDERED IN CONNECTION HERewith, THE PURCHASE PRICE OF SUCH PRODUCTS AND/OR SOFTWARE, AND (B) ELO SHALL IN NO EVENT BE LIABLE TO BUYER OR ANY OTHER PERSON OR ENTITY, WHETHER IN CONTRACT, STRICT LIABILITY, TORT OR OTHERWISE, FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, OR CLAIMS OF ANY THIRD PARTIES.

9. ACCEPTANCE: RETURNS: Buyer shall inspect Products promptly upon their receipt. Nonconformities visible upon receipt have to be noted on the delivery note and/or Waybill presented by the delivering carrier. Unless Buyer notifies Elo in writing within two (2) business days after the receipt of Products that the Products are nonconforming, describing the nonconformity in commercially reasonable detail, Buyer shall be deemed to have accepted the Products. Buyer may not revoke its orders or

acceptance of Products and shall be barred from any remedy not explicitly set forth herein. No Products delivered and accepted under these Terms are subject to returns except upon written approval of Elo at its sole discretion and subject to these Terms.

10. PROPERTY FURNISHED BY BUYER: If Buyer furnishes any components, specifications, parts, tools, dies, jigs or other property or facilities to Elo in connection with the performance of this Agreement, Buyer shall bear all risk of loss or damage with respect to such property or facilities and shall indemnify and hold Elo harmless from and against all loss, cost, expense or liability arising in connection with its use of any such property or facilities. Elo shall not be responsible for any delay in performance or nonperformance hereunder or the failure of any Product to conform to applicable specifications resulting, in whole or in part, from Elo's use of property or facilities furnished by Buyer. Any Non-Reoccurring Engineering fees paid by Buyer or on its behalf to Elo or agreed to by the parties in writing are non-cancellable and non-refundable, and, unless otherwise agreed by both parties in writing, any tooling purchases by Elo shall be the sole property of Elo.

11. PROPRIETARY INFORMATION AND RIGHTS: (a) As used herein, the term "**Proprietary Information**" includes any information of a confidential or proprietary nature obtained from Elo and any information obtained from Elo which is not readily available to others in the public domain. Elo retains all rights, title and interest in the Products, Software, methods by which the Services are performed, the processes that make up the Services and any Materials, all other Proprietary Information and all documentation which contains Proprietary Information, including the intellectual property (including all copyrights, patents, trademarks, trade secrets and trade dress) embodied therein and the methods and the processes incorporated therein, shall belong solely and exclusively to Elo or the applicable suppliers or licensors, and Buyer shall have no rights whatsoever in any of the above, except as expressly granted in these Terms. Buyer shall not disclose, duplicate or reproduce, modify, remove, delete, augment, add to, publish, transmit, adapt or reverse engineer, decompile or disassemble the Products, the Software or Materials or any portion thereof or any other Proprietary Information nor shall Buyer use any Proprietary Information other than in the course of exercising its rights or performing its obligations hereunder. Buyer shall take all reasonable steps to prevent the disclosure, duplication or reproduction of any Proprietary Information. Notwithstanding the foregoing, Buyer shall not be required to refrain from disclosing or using any Proprietary Information which has become known to Buyer if the original source of such Proprietary Information was not Elo or any person or party affiliated with Elo or having an obligation of confidentiality to Elo. Trademark rights of Elo are not transferred with the Products. Neither these Terms nor any purchase of Products hereunder shall be construed to confer upon Buyer or its customers any license under any patent or other proprietary rights of Elo, except the right to use such Products for the purposes for which they are sold.

12. CANCELLATION: Neither the Order, these Terms or any purchase order hereunder may be cancelled by Buyer. Buyer is permitted one reschedule opportunity with no charge provided that Buyer notifies Elo of its request to do so at least five (5) business days prior to the scheduled shipment thereof. A reschedule cannot extend further than 30 days from original ship date requested and must remain within the original calendar quarter requested. Additional reschedules will be subject to a ten percent (10%) penalty based on total amount of the order or rescheduled portion, in Elo's sole discretion.

13. DEFAULT: The following shall constitute events of default of the Buyer. If the Buyer: (a) defaults on any of its payment or other monetary obligations and such default continues for a period of ten (10) days after receipt of written notice of such default; or (b) fails to perform any other material obligations of Buyer hereunder and such failure continues for a period of fifteen (15) days after receipt of written notice of thereof; or (c) commences a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeks the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding

commenced against it, or shall take any corporate action to authorize any of the foregoing, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or (d) has an involuntary case or other proceeding commenced against it seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 45 days, or an order for relief shall be entered against it, then Elo may terminate these Terms (except for terms that by their nature survive termination) or cancel any purchase order. Termination of these Terms by Elo shall not relieve Buyer of any liability for damages or otherwise which may have been incurred by any breach hereunder. Elo's remedies hereunder shall be cumulative, and in addition to any other remedies available to Elo at law, in equity or otherwise.

14. REALE OF COMPONENT PRODUCTS: Buyer may not resell Component Products. Elo shall not be obligated to provide any warranty service or other technical support for any Component Products not purchased directly from Elo or its authorized distributor or reseller hereunder.

15. NON-WAIVER OF DEFAULT: No failure by Elo to insist on strict performance of any term or condition hereof shall constitute a waiver of such term or condition or any breach thereof, nor shall such failure in any way affect Elo's legal remedies with respect to any default by Buyer hereunder.

16. APPLICABLE LAW; VENUE: This Agreement shall be governed by and construed in accordance with the laws of the state of California excluding laws directing the application of the laws of another jurisdiction. Any dispute regarding this Agreement shall be subject to the exclusive jurisdiction of the state courts in and for Santa Clara County, California (or, if there is federal jurisdiction, the United States District Court for the Northern District of California), and the parties hereby irrevocably agree to submit to the personal and exclusive jurisdiction and venue of such courts and hereby waive, to the fullest extent permitted by law, any right to a jury trial. Where a Buyer is headquartered outside the United States and its territories, any controversy or claim arising out of or relating to these Terms, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. The place of arbitration shall be New York, and the language of the arbitration shall be English. In addition to the authority conferred on the arbitrator, and without prejudice to any provisional measures that may be available from a court of competent jurisdiction, the arbitrator shall have the power to grant any provisional measure, including, but not limited to, provisional injunctive relief. Any such provisional measures ordered may be deemed to be a final award on the subject matter of the measures and shall be enforceable as such. The arbitrator shall be guided by the IBA Rules On the Taking of Evidence In International Arbitration. No information concerning an arbitration, beyond the names of the parties and the relief requested, may be unilaterally disclosed to a third party by any party unless required by law. Judgment upon any award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Vienna Purchasing Convention (United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980 (CISG) is hereby explicitly excluded.

17. HIGH RISK APPLICATIONS: In connection any anticipated use of Products or Software by Buyer in hazardous environments requiring fail-safe performance (including medical applications (including without limitation cardiac pacemakers, defibrillators, electrodes, leads, and programmers, and components therefor), aircraft navigation or communication systems, air traffic control, nuclear facilities or applications or any other application in which the failure of the products, software or services could lead directly to death, personal injury or severe physical or property damage (collectively, "**High-Risk Application**"), Buyer acknowledges and agrees that Elo's products are manufactured under normal industrial conditions, which may not satisfy the requirements applicable to products manufactured for certain High-Risk Applications. It is the sole responsibility of persons contemplating High-

Risk Application of Elo's products to comply with all applicable laws, regulations, codes and standards, including the U.S. Federal Food, Drug and Cosmetic Act and regulations of the Food and Drug Administration or other similar laws, and Elo expressly disclaims any express or implied warranty of fitness for High-Risk Application. Buyer will indemnify, defend, and hold harmless Elo and its officers, directors, employees, agents, and contractors from and against any and all losses, claims, damages, liabilities, and expenses (including reasonable attorneys fees) based upon any bodily injury or property damage arising from Buyer's incorporation of Products or Software as part of any product made by Buyer for High-Risk Applications.

18. ASSIGNMENT: Buyer may not transfer or assign this Agreement or any interest herein, by operation of law or otherwise, without the prior express written consent of Elo. Any attempted transfer or assignment without such consent shall be void.

19. ENTIRE AGREEMENT; MODIFICATION: These Terms supersede all prior written and oral agreements and understandings between Elo and Buyer with respect to the Products and services specified herein. No representation or statement not contained herein shall be binding upon Elo, including any purchase order. No addition to or waiver, modification or cancellation of any provision hereof shall be binding upon Elo unless in writing and signed by a duly authorized representative of Elo.

20. NOTICES: All notices and other communications hereunder shall be in writing and be mailed by first-class, registered or certified mail, postage prepaid, to the parties hereto at their respective designated addresses as set forth in the Order, subject to either party's right to change such address upon ten (10) days' prior written notice. All notices to Elo shall be

sent with a copy to Elo Touch Solutions, Inc., 1033 McCarthy Blvd., Milpitas, CA 95035, attention: General Counsel.

21. EXPORT CONTROL: Buyer acknowledges that the Products, Software, Services, technical information and/or other Materials are or may be subject to export/re-export laws and regulations of the United States or other countries in which Buyer operates. The Products, Software and Materials are subject to AT-level export controls as defined by the Export Administration Regulations (EAR) and U.S. Government export regulations. Buyer will (i) not export, re-export, divert, transfer or disclose, directly or indirectly, any Products, Software or Services without complying strictly with all legal requirements including obtaining prior approval of the U.S. Department of Commerce and, if necessary, other government agencies; (ii) execute and deliver such "Letters of Assurance" as may be reasonably requested by Elo; (iii) ensure that Buyer, its employees and any third parties accessing such Products, Software or Materials fully comply with the requirements of this provision and provisions of ITAR and EAR in addition to any other applicable law requirements, and Buyer will indemnify Elo against any losses related to a failure to conform to these requirements.

22. INVALIDITY; SEVERABILITY: Should any provision of these Terms be or become invalid, such provision will be replaced by a valid provision to the maximum extent permitted by law satisfies the same legal, economic and originally intended purpose and other terms shall remain.

23. AGREEMENTS; COUNTERPARTS: Any Orders, agreements or amendments must be in writing and may be signed in counterparts, including by electronic signature, each of which shall be considered an original.