

TOUKANEYES LTD - GENERAL TERMS AND CONDITIONS

1. GENERAL: These General Terms and Conditions ("Terms") of ToukanEyes Ltd, The Retreat, 406 Roding Lane South, Woodford Green, Essex, England, IG8 8EY ("TOUKANEYES LTD") shall apply to all deliveries of products and services ("Deliverables") by TOUKANEYES LTD. Customer's terms and conditions are expressly excluded.
2. ORDERING, PRICING, PAYMENT: All Customer's orders shall reference these Terms and be subject to TOUKANEYES LTD's acceptance. Customer shall pay the prices listed on the accepted order or otherwise the current TOUKANEYES LTD prices within thirty (30) days upon invoice without deduction. In case of more than one due payment TOUKANEYES LTD shall be free if and how it applies incoming payment on the debts. Prices are net DDP (Incoterms 2010). VAT is charged separately at the rate applicable on the day of invoicing. Interest charge on Customer's overdue payment shall be 8% p.a. above 1-year Libor. Customer may only set off undisputed or non-appealable counterclaims.
3. SOFTWARE LICENSE: TOUKANEYES LTD grants to Customer a non-exclusive and non-transferable license to install and use the ordered proprietary TOUKANEYES LTD software on the specified hardware. The software (and all copies thereof) and all intellectual property rights therein are and shall remain proprietary to TOUKANEYES LTD. For third party software the licensing terms of the third party apply. The licensing of non-proprietary software is subject to its respective published terms (URL: <http://.....>). Customer shall, in particular but not limited to, not: (a) decompile, disassemble, or reverse engineer the software in whole or in part, (b) allow access to the software by any user not expressly permitted hereunder, (c) sell or transfer otherwise, lease, lend or use the software for the purpose of other services (d) remove any copyright, trademark, and other notices that appear on the software. The Software License ends by destruction or return of the software or may be terminated by TOUKANEYES LTD in case of material breach of these terms or any agreement hereunder by Customer after giving Customer reasonable time to cure such violation.
4. SAAS: If TOUKANEYES LTD provides software as a service ("SaaS") the current SaaS Service Level Terms of TOUKANEYES LTD shall apply (URL: <http://.....>)
5. INDIVIDUAL SOFTWARE: If Customer orders software adapted to its individual needs TOUKANEYES LTD will use existing modules of its algorithms combining them to the customised software. It does not create works being subject to new intellectual property rights. If the law nevertheless deems the customised software to be a new work, all rights to it shall be vested in TOUKANEYES LTD. Clause 3. of these Terms shall apply to Customer's right to use the individual software.
6. HOSTING: If Customer orders software hosting services TOUKANEYES LTD may procure those services for Customer from Third Party. Customer agrees that TOUKANEYES LTD transfers Personal Data to Third Party to the extent permissible by applicable Data Protection Law. Third Party's current hosting terms and conditions (URL: <http://.....>) shall govern the provision of hosting services by TOUKANEYES LTD to Customer accordingly (back-to-back). TOUKANEYES LTD shall ensure that Third Party complies with the level of Confidentiality and Protection of Personal Data as agreed between TOUKANEYES LTD and Customer.
7. CONSULTANCY: Customer shall provide complete and correct information to enable TOUKANEYES LTD to provide consultancy service. The use of TOUKANEYES LTD's Consultancy advice remains subject to Customer's sole discretion and risk.
8. CUSTOMER OBLIGATION: Customer will provide TOUKANEYES LTD with all information, cooperation, consents and licenses reasonably necessary for TOUKANEYES LTD to supply the Products and Services. If Customer procures the Products or Services for the benefit of an end-user, it shall ensure that such end-user is bound by these Terms.

9. **DELIVERY, TITLE AND ACCEPTANCE:** Products are delivered DDP (Incoterms 2010). Software may be provided by electronic means. TOUKANEYES LTD retains ownership of the sold hardware and the license to use the software remains revocable until all due payments under the business relation with the Customer are received. Acceptance of product(s) ("Acceptance") that TOUKANEYES LTD has agreed to install occurs upon successful completion of TOUKANEYES LTD's standard installation procedures which demonstrate conformance to the applicable TOUKANEYES LTD published specifications.
10. **WARRANTY:** No specifications, descriptions or any other statement for product and service shall be deemed as guarantee. (a) Unless agreed differently TOUKANEYES LTD warrants that the hardware and proprietary software will for a period of six (6) months after delivery or Acceptance in case of installation by TOUKANEYES LTD under normal usage and with regular recommended service, be free from material defects in materials or workmanship, and perform in accordance with the applicable TOUKANEYES LTD published specifications. This warranty does not apply to problems that arise from (aa) accident or abuse, (bb) interoperation with other non-TOUKANEYES LTD products being not approved by TOUKANEYES LTD, (cc) improper installation or modification by other than TOUKANEYES LTD, or (dd) use in an environment or in a manner or for a purpose for which product(s) were not designed. TOUKANEYES LTD's entire liability and Customer's exclusive remedies under the warranties described in this Section shall be for TOUKANEYES LTD to, at its option, (aa) use reasonable efforts to remedy such defects or failures to so perform within a reasonable period of time, or (bb) replace the affected Product(s), or ultimately (cc) refund the amount paid by Customer for the affected Product(s), less the pro rata amount for the time of use without material defects, upon the return thereof to TOUKANEYES LTD. (b) TOUKANEYES LTD shall perform installation and all other services in a workmanlike manner in accordance with generally accepted industry standards using reasonable skill and care. (c) TOUKANEYES LTD shall have a right to remedy in case of a breach of any its obligations.
11. **INDEMNITY:** TOUKANEYES LTD shall defend Customer against any third party claim that use of proprietary product(s) or services delivered and licensed by TOUKANEYES LTD infringe a patent or copyright, and pay the resulting costs and damages awarded against Customer by a court of competent jurisdiction, provided Customer (i) notifies TOUKANEYES LTD promptly in writing of such claim, (ii) grants TOUKANEYES LTD sole control over the defence and settlement thereof, and (iii) reasonably cooperates in response to a TOUKANEYES LTD request for assistance. Should any product(s) become, or in TOUKANEYES LTD's opinion be likely to become, the subject of such a claim, TOUKANEYES LTD shall, at its option and expense, (a) procure for Customer the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or ultimately (c) request return and upon receipt thereof refund the price paid by Customer, less the pro rata amount for the time of use. TOUKANEYES LTD shall have no liability if the alleged infringement is based on (a) combination with non-TOUKANEYES LTD products being not approved by TOUKANEYES LTD, (b) use for a purpose or in a manner for which the product was not designed, (c) any modification not made with TOUKANEYES LTD's written approval, (d) any modifications made by TOUKANEYES LTD pursuant to Customer's specific instructions, or (e) any intellectual property right owned or licensed by Customer.
12. **FORCE MAJEURE:** TOUKANEYES LTD shall not be liable for breach of this agreement by an event that arises from or is attributable to acts, events, omission or accidents beyond its reasonable control.
13. **LIMITATION OF LIABILITY:** The liability of TOUKANEYES LTD shall be limited to the lesser of (a) the total value of the respective order or (b) the amount of two hundred thousand (200,000.00) British Pounds Sterling. TOUKANEYES LTD shall not be liable for any indirect, consequential, incidental loss or damage such as but not limited to loss of profit or revenue. The above limitation of liability shall not apply to Customer's claims in compliance with the product-liability law or due to wilful conduct, gross negligence, injury or impairment of health. Liability for loss of data is limited to the reinstallation of data available on Customer's back up files.
14. **CONFIDENTIALITY:** TOUKANEYES LTD and Customer shall keep confidential all information they learn or receive from each other during their dealings in accordance with the current TOUKANEYES LTD Non-Disclosure Terms (URL: [http://.....](#))
15. **AUDIT:** TOUKANEYES LTD may have an independent auditor examine once a year Customer's relevant files in order to verify its compliance with the stipulations of these terms.
16. **MISCELLANEOUS:** Customer shall not export or re- export the Products or technical data without first obtaining all such written consents or authorisations as may be required by any applicable governmental regulations in force, including those of the US Commerce Department. These Terms may be modified only in writing signed by both parties and are governed by the law of England and Wales, excluding its conflict of law rules and The U.N. Convention on Contracts for the International Sale of Goods. Place of jurisdiction shall be London. If any part of these Terms is held unenforceable, the validity of the remaining provisions shall not be affected, and the invalid part shall be substituted by a clause that comes closest to it.