

## Terms and Agreement

1. **Purchase and Sale.** Customer (“Buyer”) hereby agrees to purchase from Smile POS, LLC (“Smile”) and Smile hereby agrees to sell to Buyer the property described or referred to on the invoice attached hereto upon terms and conditions as set forth herein. No additions or modifications to, or terms inconsistent with these terms and conditions contained in any acceptance or unless expressly agreed to in writing by Smile and Buyer are permitted. Smile’s failure to object to any term or condition contained in any communication from Buyer will not be deemed an assent to such terms or conditions or waiver of these terms and conditions.
2. **Acceptance.** Buyer agrees to the terms and conditions herein upon acceptance of hardware or software provided by Smile.
3. **Price.** Buyer hereby agrees to purchase from Smile the components, software, and services listed on the Invoice on the payment terms specified therein. The purchase price is inclusive of state and local taxes.
4. **Limited Warranty.** All hardware purchases a one-year limited warranty on all parts, material, and workmanship excluding ribbons, ink cartridges, and paper products. Hardware will not be returned to Smile without pre-approval. The foregoing warranty and Smile obligations thereunder will be void and are specifically disclaimed under the following circumstances:
  - a. When hardware or any part thereof has been subjected to:
    - i. Improper installation,
    - ii. Alteration or abuse,
    - iii. Improper storage, transport, or handling.
  - b. When hardware is used on electrical services not conforming to the National Electrical Code.
  - c. When repairs, replacements or parts, servicing, adjustments, installations or other work is done on the hardware or any part thereof by Buyer or any third party other than in strict compliance with the written authorization of Smile.
  - d. When software or transaction data is modified without the recommendation in writing of Smile.
5. **Delivery.** Unless otherwise expressly provided, this is an agreement to purchase a system. Delivery of the equipment specified on the Invoice will be completed when made

F.O.B. Lynnwood, WA. Buyer will make payment for all partial shipments as soon as delivery of the partial shipment is completed.

6. **Support.** Smile will provide phone support during the original warranty period. Repairs or replacements of hardware under this warranty will be performed off-site at Smile's headquarters on regular business days and during regular business hours of Smile's West-coast office in Lynnwood, Washington. All repairs will be made within a reasonable time. Buyer will pay for all on-site maintenance or repair performed during hours other than those stated above, at Smile's current hourly service rate of \$65 for on-site support and \$30 for off-site support. Buyer will pre-pay all hardware freight expenses to Smile.
7. **Confidentiality.** Buyer hereby agrees that any and all data, documents, manuals, drawings, software programs, computer code, source code, database, or specifications furnished to Buyer by Smile in connection with the sale of the equipment is confidential proprietary data and material and will not be used or disseminated except as necessary for the installation, testing, operation, and maintenance of the equipment.
8. **Copyright.** All title and copyrights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software), the accompanying printed materials, and any copies of the Software are owned by Smile. The Software is protected by copyright laws and international treaty provisions. Therefore, the Buyer must treat the Software like any other copyrighted material except that the Buyer may install the Software on a single computer provided the Buyer keeps the original solely for backup or archival purposes. You cannot copy, rent, lease, lend, transfer or resell the code, software, or printed materials accompanying the Software.
9. **Cancellation and Rescheduling.** This agreement may not be canceled by the Buyer without forfeiture of all payments made or due through the date of cancellation. If Buyer should require later delivery or training, rescheduling can only take place with the written agreement of Smile, and all rescheduling is subject to the availability of supplies and resources.
10. **Food and Beverage.** Buyer will provide complimentary food and beverage to Smile's installation and training team. If installation or training requires travel from Lynnwood, WA of more than sixty (60) miles, Buyer will cover travel costs and expenses.
11. **Buyer's Responsibilities.** Buyer will cooperate with Smile's installation and training teams to allow Buyer's management to receive training in accordance with the pre-arranged schedule. Buyer assumes full responsibility for the equipment's operation, use, or misuse.

12. **Title.** Title to any product supplied pursuant to these Terms and Conditions will not pass to the Buyer and will remain with Smile until Buyer has paid Smile in full for such product.
13. **Law, Enforcement.** The laws of the State of Washington will govern this agreement, the construction of its terms, and the interpretation of the rights and duties of the parties. This agreement will inure to the benefit of and be binding upon the successors and assigns of Buyer. Buyer will pay to Smile all fees, costs, and expenses incurred in enforcing its rights under or with respect to this agreement, including costs and expenses of attorneys in the event litigation becomes necessary.
14. **Notice.** All written notices or other communications required pursuant to this agreement will be given by fax, personal messenger, return receipt requested, or by deposit thereof in the United States mail, postage prepaid, registered or certified mail, return receipt requested, to the addresses set out in this agreement or its corresponding invoice. Either party may update its address by following the notice procedures of this clause.
15. **Software.** In the event any of the software is not as represented, Buyer will send notice to Smile detailing the corrections required and Smile will have 30 days to repair such software or cure any defects. Smile will not be held liable for any incorrect representations, incorrect installations, or modifications made by third-parties to the software.
16. **Software Support and Upgrades.** Smile will provide one year of off-site software support and upgrades for its software. Buyer is responsible for any supporting required software, including but not limited to the licensing costs for a compatible version of Microsoft Windows or other applicable operating systems.
17. **Entire Agreement.** Buyer acknowledges that this agreement has been read and understood, including all attachments, and agrees to be bound by its terms. Buyer acknowledges and agrees that this, combined with the invoice, is the complete and exclusive statement of the agreement between the parties, superseding all other communications or representations, oral or written, on the subject matter of this agreement. This agreement may be modified only by written consent signed by the parties.