

Terms and Conditions of Purchase and Sale of Goods (incl. SLA's)

These Terms and Conditions apply to all Purchasing Transactions between TOSHIBA ONLINE CC t/a PrinterCare and its Customers.

Definitions

"TOSHIBA" means the legal entity of TOSHIBA ONLINE CC t/a PrinterCare that entered into a Purchase Transaction with the Customer;

"Customer" means an organisation, authorised person or entity that has entered into a Purchasing Transaction with TOSHIBA;

"Purchasing Transaction" means a purchase of Goods and Services from TOSHIBA by Customer;

"Goods" means TOSHIBA equipment and third party software, IT equipment, consumables and accessories;

"Services" means hardware and/or software support/maintenance services, training and/or professional services.

"End User" means organisation, authorised person or entity which will actually use the Goods.

1. Order of Goods and Services

1.1. Customer may order Goods and Services by submission of an order document or such to TOSHIBA. TOSHIBA shall have no obligation to deliver any Goods or perform any Services until TOSHIBA sends a Sales Order or Invoice Confirmation regarding availability, delivery dates, and price by way of a Quote or Proforma Invoice. The Order Confirmation constitutes acceptance of Customer's order, subject to credit approval. Where TOSHIBA has delivered goods or performed any services without such confirmation, it shall be deemed that the order received from the customer or the quotation sent by TOSHIBA has served as reference document.

1.2. These Terms and Conditions constitute the entire agreement between TOSHIBA and Customer with regard to the ordered Goods and Services, notwithstanding any contrary or additional terms or conditions contained in any order document delivered by Customer. Where there is a written and mutually agreed upon reseller agreement or other framework, purchase or license agreement covering the purchase of the Goods and Services between TOSHIBA and Customer, the terms of that agreement shall supersede these Terms and Conditions.

1.3. TOSHIBA requires a mutually agreed upon statement of work for all professional services engagements.

2. Software License Terms – Support

2.1. Purchase of software is a purchase of a contractual right or license to use the software, not title to the software. Where Customer is the intended End User of the software, Customer further agrees to the terms and conditions packaged or delivered with the software (via media or download, or preloaded on computer equipment, and including click-wrap and shrink-wrap terms), referred as End User License Agreements (EULAs). Where Customer intends to resell the software, Customer agrees to deliver any such EULAs to the End User with the software without alteration.

3. Price

Prices for Goods or Services shall be as set out in TOSHIBA's Order Confirmation. Prices exclude delivery costs, insurance, sales tax, VAT and similar taxes and charges. Prices are effective on the date of acceptance by TOSHIBA of Customer's order. TOSHIBA may at any time change its prices without notice.

4. Delivery, Title and Risk of Loss

4.1. Deliveries shall be CIP TOSHIBA facilities (Incoterms 2000), to the address advised by the Customer and at the Customer's risk and expense. Risk of loss shall pass to the Customer upon physical delivery of the Goods to the forwarding agent or carrier, or, with regard to software, also by making the software available for download along with all software keys or codes necessary to use the software. Customer is responsible for payment of delivery charges and the expense of any related insurance.

4.2. Title to the Goods passes when paid for in full. If payment is overdue, TOSHIBA may require Customer to return unpaid Goods, and shall be entitled to enter Customers' premises to recover such Products and or costs incurred. Such costs shall include but not be limited to legal costs incurred by Toshiba on an attorney/client scale.

4.3. Delivery dates quoted by TOSHIBA are best effort forecasts made in good faith, but TOSHIBA cannot accept responsibility or liability for any delays. TOSHIBA shall be entitled to effect partial deliveries to a reasonable extent.

5. Payment Terms

5.1. Goods will be invoiced when ready for delivery. Where credit terms have been agreed upon, invoices are payable as described in the Order Confirmation or invoice. Where credit terms have not been agreed upon, invoices must be paid for before Goods are delivered or on delivery. TOSHIBA may delay all future deliveries of Goods (and return any items being repaired) and may decline to accept any new orders when amounts are overdue or Customer's credit limit have been exceeded.

5.2. If delivery is made in installments, payment shall be made in respect of each delivery. Failure to make any payment will result in repossession of the goods and will attract a handling fee (see 5.4).

5.3. Any late or non-payment for goods received may attract the full collection fee of monies owed and will be allocated to the debtor's account.

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5.4. No claim in respect of any one disputed item or invoice shall entitle Customer to withhold payment on any other item or invoice.

5.5. If Customer fails to notify TOSHIBA in writing of any inaccuracy in any invoice or delivery of Goods there under (incorrect price, short or damaged delivery, etc.) within 5 working days of the invoice date, Customer will have presumed to have accepted the invoice in full.

5.6. In the event of a breakdown of negotiations post-delivery and after the machine or goods has/have been used Toshiba reserves the right to charge 20 % handling fee.

6. Force Majeure

If TOSHIBA is prevented by force majeure from delivering Goods, or performing any other obligations, TOSHIBA will be excused its performance for as long as such cause shall continue. Force majeure shall include civil commotion, riot, war, threat or preparation for war, fire, flood, earthquake, labour dispute, failure of gas, water, electricity or other services, interruption of transport, law, rule or regulation of any Government or other authority, or any cause beyond the reasonable control of TOSHIBA.

7. Warranty

Goods, excluding spare parts or consumables, are supplied with the manufacturer's warranty. Where Goods are returned under warranty, such items should be returned carriage paid to TOSHIBA, whereupon TOSHIBA will replace or repair the defective goods. TOSHIBA reserves the right to charge where no defect is found in the Product. TOSHIBA will endeavor to replace or repair the Goods within a reasonable time, but TOSHIBA can give no guarantees that repairs will be completed in a particular time.

8. Compliance with Laws

The Customer shall comply with all applicable statutory or regulatory procedures in connection with cross-border shipments and transactions.

9. Limitations on Liability

9.1. NEITHER PARTY SHALL BE HELD LIABLE TO THE OTHER FOR CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOST PROFITS OR DAMAGES RELATING TO LOSS OF DATA.

9.2. In cases of intentional acts, claims under product liability laws, malicious non-disclosure of a defect, as well as claims based on damage to life, body or health, TOSHIBA 's liability shall be determined in accordance with statutory law.

9.3. The total liability of TOSHIBA, whether in contract, tort (including gross negligence) or otherwise, shall in no circumstances exceed the amounts paid in connection with the respective Purchase Transaction. Any claim for damages will expire within one year after provision of the Goods or Services or from the date the cause of action arises.

10. Miscellaneous

10.1. TOSHIBA's failure to exercise a right shall constitute no waiver of assertion of that right in future and shall not lead to ineffectiveness of the contractual provisions concerned.

10.2. The Purchase Transaction shall be subject to the local law of the country, where TOSHIBA is based, and the conflict of laws rules and UN Sales Law shall be excluded. The place of performance shall be TOSHIBA 's registered office. For all disputes arising out of or in connection with these terms and conditions the contracting parties agree on exclusive jurisdiction of the commercial courts TOSHIBA registered office.