

UPS TRACKPAD® TERMS AND CONDITIONS
UPSPSITPA02-0618

The provision of the UPS Trackpad® Solution by UPS Professional Services, Inc. (“UPS-PSI”) is governed by the Client Agreement entered between UPS-PSI and the customer identified thereon (“Client”), which includes without limitation the General Terms and Conditions incorporated therein, these UPS Trackpad® Terms and Conditions (the “Trackpad Terms”) and any UPS Trackpad® Purchase Orders (each, a “Purchase Order”) entered between UPS-PSI and Client, and all schedules, exhibits, or addenda to any of the foregoing (all of the foregoing, collectively, the “Client Agreement”). These Trackpad Terms are hereby incorporated into and made subject to the Client Agreement entered between UPS-PSI and Client. Capitalized terms used herein but not defined have the meaning ascribed to such terms in the Client Agreement or the General Terms and Conditions incorporated therein.

1. Definitions.

“Documentation” means all materials supplied by UPS-PSI or its designee, whether in printed or online form or on magnetic tape or other media, that explain or facilitate the use of the UPS Trackpad® Solution or any part thereof, which may include, without limitation, users’ manuals, standard operational manuals or instructions, training materials, flow charts, logic diagrams, system manuals, programming manuals and modification manuals.

“Hardware” means collectively, the hardware components purchased by Client pursuant to the applicable Purchase Order in conjunction with the UPS Trackpad® Solution, including, without limitation, any personal digital assistant or handheld personal computer.

“License Fees” means the amount specified on the applicable Purchase Order for Client’s license of Software and Documentation.

“Products” means collectively the UPS Trackpad® Solution as provided to Client, including the Hardware, Software, and Documentation.

“Purchase Price” means the amount specified on the applicable Purchase Order for Client’s purchase of Hardware.

“Software” means UPS-PSI’s proprietary software for the UPS Trackpad® Solution, in object code format, which may include personal computer-based software installed on Client’s computer systems and other software installed on the Hardware.

“Software License Agreement” means the click-through license agreement provided by UPS-PSI and contained within the Software that must be accepted by a Client prior to using the Software or Documentation.

“UPS Trackpad® Solution” means the suite of solutions that facilitate the tracking of tangible and intangible assets which may be deployed using a personal digital assistant or handheld personal computer containing software components provided by UPS-PSI, as well as additional accessories.

2. Supply and License of the Products. Subject to Client’s payment of the required Purchase Price and License Fees, UPS-PSI will (a) supply to Client the applicable Hardware and (b) license to Client the applicable Software and Documentation pursuant to the terms of the Software License Agreement.

3. Conditions of Purchase. Client will be deemed to have accepted the terms and conditions of these Trackpad Terms upon Client’s signing and returning to UPS-PSI or its designee the Client Agreement incorporating these Trackpad Terms, or the delivery of any ordered Products, whichever occurs first, and the banking, negotiation or other use of any payment will not constitute an acceptance by UPS-PSI. The terms of purchase and sale are expressly limited to the terms contained in these Trackpad Terms.

4. Fees and Payment Terms. Client agrees to pay to UPS-PSI, or its designated subcontractor or distributor (a) the Purchase Price, and (b) all applicable taxes and duties (excluding any taxes imposed on the income of UPS-PSI) payable with respect to the Products. All invoices are due upon receipt and the Purchase Price is nonrefundable.

5. No Resale. The Hardware is available for purchase only for Client’s own use, and any resale of the Hardware purchased under a Purchase Order is prohibited. This resale prohibition is a material condition to Client’s rights under these Trackpad Terms, and it is agreed that any direct or indirect distribution, transshipment, or sale of the Hardware by Client or others purchasing through Client will be a material breach of these Trackpad Terms and will result in irreparable harm to UPS-PSI for which money damages will not be adequate. In the event of such breach, the parties agree that UPS-PSI, in addition to any other remedies it may have at law or in equity, will be entitled to injunctive relief to prevent any threatened or continued breach and to specifically enforce this provision, without any requirement of the posting of a bond.

6. Title and Risk of Loss. Title to the Hardware and risk of loss or damage will pass to Client upon shipment from UPS-PSI’s or its designee’s facility. Title to all other Products, including without limitation the Software, Documentation,

UPS-PSI developed work, and other materials, remains at all times in UPS-PSI and its licensors, as applicable. UPS-PSI reserves the right to make partial shipments, which will not relieve Client from its obligation to pay for remaining deliveries. Claims for loss or damage will be deemed waived unless presented to UPS-PSI in writing within thirty (30) days.

7. Software License Agreement.

a. As consideration for these Trackpad Terms, Client must agree to the terms and conditions of the Software License Agreement for use of the Software and Documentation. If Client fails to accept the Software License Agreement for any reason, Client will return the Software and Documentation to UPS-PSI immediately.

b. In the event of any conflict between these Trackpad Terms and the Software License Agreement, the Software License Agreement will prevail.

c. Client may only install the Software on personal computers located at the addresses set forth on Purchase Orders, as long as such addresses are located within the United States (the "Authorized Sites").

d. The Software is an integral part of the UPS Trackpad® Solution, and Client acknowledges and agrees that the Software was developed at considerable time and expense by UPS-PSI and contains valuable Confidential Information of UPS-PSI. Client understands and acknowledges that certain software programs and content on or embedded in the UPS Trackpad® Solution are the property of UPS-PSI's licensors, and that Client's right to access, execute, and use of the UPS Trackpad® Solution is subject to the rights of such licensors. Client may not remove any copyright notices, trademark notices, or any confidential or proprietary legends from the Licensed Program. Client will reproduce all notices on any copies or modifications of materials as provided herein. Client may not rent, lease, encumber, pledge, lend, copy, make available, distribute, or act as a service bureau as to the Licensed Program or any component thereof.

8. Limited Hardware Warranties. Certain components of the UPS Trackpad® Solution are covered by the limited warranties provided by the original manufacturers of such components, all as set forth in the Documentation, which will be available to Client on the terms and conditions of such manufacturers. In addition, Client may purchase from UPS-PSI a two (2) year limited warranty for defects in materials and workmanship of the Hardware (the "UPS-PSI Limited Warranty") for an additional fee. During the UPS-PSI Limited Warranty period, if applicable, and provided that Client has paid the Purchase Price and License Fees, in the event of any defects in materials and workmanship of the Products covered, UPS-PSI will, at its option, (a) provide necessary replacement parts to repair the Products; or (b) replace the Product with a comparable Product. The foregoing remedies will be Client's sole and exclusive remedy under the UPS-PSI Limited Warranty. Purchasing additional products from UPS-PSI will not extend the UPS-PSI Limited Warranty.

9. Limited Technical Support. Subject to Client's payment of the required Purchase Price and License Fees, UPS-PSI will provide limited technical support for the Products ("Technical Support") for a period of one (1) year following the execution of the Purchase Order, or for an additional fee, for a period of three (3) years following the execution of the Purchase Order. Thereafter, Client may extend the Technical Support for additional one (1) year periods for an additional fee, which will be calculated based on UPS-PSI's then-current rates for the applicable Products. Purchasing additional products from UPS-PSI will not extend the Technical Support.

The Technical Support will be provided in accordance with the UPS-PSI Trackpad Support Policy available at <http://www.ups-psi.com/UPSPSILegalAgreements/images/UPSTrackpadSupportPolicy.pdf>, which UPS-PSI may update from time to time at its discretion. During the Technical Support period, for any Products that do not materially perform in accordance with the Documentation, UPS-PSI will use commercially reasonable efforts to troubleshoot and resolve any such non-conformance, provided that such failures are not the result of defects in materials or workmanship of Hardware covered by the manufacturer's warranty or the UPS-PSI Limited Warranty (whether during or after the applicable warranty period) or are not otherwise excluded pursuant to Section 10 below.

10. DISCLAIMERS. THE UPS-PSI LIMITED WARRANTY COVERS NORMAL USE OF THE HARDWARE. UPS-PSI DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR MISUSE, ABUSE, ACCIDENTS OR VIRUSES, UNAUTHORIZED SERVICE OR PARTS, OR THE COMBINATION OF THE PRODUCTS WITH ANY UNAUTHORIZED PRODUCTS.

THE LIMITED WARRANTIES SET FORTH IN SECTIONS 8 AND 9 ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES. OTHERWISE, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" AND NO OTHER WARRANTY, REPRESENTATION, CONDITION, UNDERTAKING OR TERM, EXPRESS, OR IMPLIED, STATUTORILY OR OTHERWISE, AS TO THE CONDITION, QUALITY, DURABILITY, PERFORMANCE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR USE OF THE PRODUCTS OR SERVICES IS GIVEN OR ASSUMED BY UPS-PSI OR ITS AFFILIATES, SUPPLIERS OR AGENTS AND ALL SUCH WARRANTIES, REPRESENTATIONS, CONDITIONS, UNDERTAKINGS AND TERMS ARE HEREBY EXCLUDED AND DISCLAIMED. SOME STATES DO ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO CLIENT.

11. Hosting Services. If UPS-PSI operates or provides a hosting platform for the UPS Trackpad® Solution to Client on computer systems operated by or on behalf of UPS-PSI (“Hosting Services”), such Hosting Services will be provided pursuant to the UPS Trackpad® Hosting Services Appendix to the UPS Trackpad® Terms and Conditions, and are hereby incorporated by reference.

12. Survival. Notwithstanding anything herein to the contrary, the provisions of Sections 1, and 4 through 2 of these Trackpad Terms will survive the termination or expiration of these Trackpad Terms.

[End of UPS Trackpad® Terms and Conditions]