

# nextScan Terms and Conditions

1. **APPLICABILITY.** These Terms and Conditions of Sale (“Terms”) apply to the purchase of the products (the “Products”) and ancillary services (the “Services”), in each case as identified and described in the accompanying quotation, proposal, order acknowledgement, or invoice (the “Sales Confirmation”), offered by nextScan, a division of Digital Check Corp. (“Seller”), to the buyer identified in the Sales Confirmation (the “Buyer”). These Terms and the Sales Confirmation, together with Seller’s Limited Product Warranty, comprise the entire agreement between the parties (collectively, the “Agreement”). Buyer accepts these Terms by signing and returning Seller’s quotation or proposal, sending a purchase order in response to the quotation or proposal, instructing Seller to ship the Product, or using the Product. No terms, conditions or warranties other than those included in this Agreement, and no agreement or understanding, oral or written, in any way purporting to modify this Agreement, whether contained in Buyer’s purchase order or shipping release forms, or elsewhere, shall be binding on Seller unless hereafter made in writing and signed by Seller’s authorized representative. Buyer is hereby notified of Seller’s express rejection of any terms inconsistent with this Agreement and to any other terms proposed by Buyer in accepting these Terms. Neither Seller’s subsequent lack of objection to any such other terms, nor the delivery of the Products or Services, shall constitute an agreement by Seller to any such other terms.
2. **GOVERNMENT CONTRACTS.** If Buyer is purchasing the Products or Services for a government contract or sub-contract, Buyer shall immediately notify Seller of that fact and of any contractual terms pursuant to government procurement laws and regulations that Buyer is obligated to include in its contracts for the purchase of the Products or Services. No government procurement provisions will be included in this Agreement unless agreed to in a writing signed by an authorized representative of Seller.
3. **PRICE.** All stated prices are exclusive of any sales, use, and excise taxes, and any other similar taxes, fees, duties, and levies, however designated or imposed, including but not limited to sales, value-added and withholding taxes, that are levied on or based upon the amounts payable under this Agreement (collectively, “Taxes”). Any such Taxes are the responsibility of Buyer, unless Buyer presents a valid exemption certificate acceptable to Seller and issued by applicable taxing authorities. If possible, Seller will separately itemize Taxes on the invoice presented to Buyer. If any exemption certificate presented by Buyer is subsequently held or otherwise deemed to be invalid, then Buyer will promptly pay Seller an amount equal to the Tax that should have been paid at the time of sale, plus any penalties and interest related thereto.
4. **PAYMENT.** Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Thereafter, unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code (“UCC”) for Buyer’s failure to pay for the Products and Services and for any other breach by Buyer of this Agreement. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products or the performance of any Services if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer’s receipt of notice thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise.
5. **DELIVERY; SHIPPING.**
  - (a) Seller will deliver the Products within a reasonable time after Buyer accepts these Terms. The delivery date provided by Seller for the Products is only an estimate and assumes Buyer’s prompt delivery of all necessary information to Seller. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to reimbursement of any and all extra costs and expenses incurred by Seller resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver the Products by the estimated delivery date will not be deemed a material breach of this Agreement by Seller.
  - (b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products, EXW (Incoterms® 2010) at Seller’s location specified in the Sales Confirmation (the “Delivery Location”), using Seller’s standard methods for packaging and shipping the Products. Buyer will take delivery of the Products immediately upon delivery to the Delivery Location. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of Buyer’s order. Buyer is responsible for obtaining any import licenses and other consents required for any shipment of the Products at its own expense and will provide the licenses and consents to the Seller before any such shipment.
  - (c) Seller shall use reasonable efforts to meet any performance dates to render the Services specified in the Sales Confirmation, and any such dates shall be estimates only.
  - (d) With respect to the Services, Buyer shall (i) cooperate with Seller in all matters relating to the Services and provide such access to Buyer’s premises for the purposes of performing the Services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform Services in accordance with the requirements of this Agreement; and (iii) provide such information as Seller may reasonably request to carry out the Services in a timely manner.
6. **TITLE; RISK OF LOSS.** (a) Risk of loss or damage to the Products passes to Buyer upon delivery to the Delivery Location. If Buyer arranges its own shipping, risk of loss or damage to the Products passes to Buyer upon delivery to the carrier. If Buyer fails to accept delivery of any of the Products on the date set forth in the notice to Buyer that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to Buyer; (ii) the Products will be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses incurred by Seller in connection with such failure, including but not limited to the cost of storage and insurance.
  - (b) Title passes to Buyer upon Buyer’s payment in full for the Products.
7. **INSPECTION; ACCEPTANCE CRITERIA; REJECTION OF PRODUCT**
  - (a) Acceptance of the Products is subject to inspection by Buyer in accordance with this Section 7. Acceptance of Products constituting scanning equipment is based solely on performance of the scanner and any ribbon storage device (“RSD”) or modules purchased hereunder. Specifically, a scanner will meet the applicable standard performance metrics available at <https://www.nextscan.com/terms>, as demonstrated immediately following installation (the “acceptance criteria”). Buyer shall be deemed to accept the Products upon demonstration that the scanner meets the acceptance criteria. Seller does not provide assistance in setting up, maintaining, or otherwise providing support with respect to Buyer’s network unless specified in a statement of work for such service. After Buyer accepts, or is deemed to accept, the Product, any quoted training and install time can be used for configuring a Buyer-supplied RSD and/or operator/tech training as requested.
  - (b) As used in this Section, “Nonconforming Products” means only the following: (i) the items shipped are different from those identified in the Sales Confirmation; or (ii) if the Products include a scanner, such scanner does not meet the acceptance criteria in (a) above. Buyer will inspect the Products within five (5) days following delivery or, if later, within five (5) days following completion of any agreed upon installation and/or training Services, as indicated in the Sales Confirmation (the “Inspection Period”). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonable required by Seller.
  - (c) If Buyer timely and properly notifies Seller of any Nonconforming Products, then Seller will, in its sole discretion, (i) repair the Nonconforming Products, (ii) replace the Nonconforming Products with conforming Products or (iii) credit or refund the purchase price for the Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer. Buyer will return the Nonconforming Products to Seller at Seller’s expense or, upon the request of Seller, dispose of the Nonconforming Products. Upon receipt of the Nonconforming Products or confirmation of their disposal, Seller will promptly (A) refund the monies owed to Buyer or (B) repair or replace the Nonconforming Products and ship the repaired or replaced Products to the Delivery Location at Seller’s expense, as applicable.
  - (d) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer’s exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller’s written authorization.
8. **LIMITED WARRANTY.**
  - (a) Seller’s Limited Product Warranty, which is incorporated herein by reference, sets forth the complete and exclusive warranty terms applicable to the Products sold hereunder. **SELLER’S SOLE AND EXCLUSIVE LIABILITY, AND BUYER’S SOLE AND EXCLUSIVE REMEDY, FOR BREACH OF THE LIMITED WARRANTY IN THIS SECTION 8(A) IS SET FORTH IN SELLER’S LIMITED PRODUCT WARRANTY.**
  - (b) Seller warrants that the Services provided hereunder will be performed using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services. **SELLER’S SOLE AND EXCLUSIVE LIABILITY, AND BUYER’S SOLE AND EXCLUSIVE REMEDY, FOR BREACH OF THE LIMITED WARRANTY IN THIS SECTION 8(B) SHALL BE REPERFORMANCE OF THE AFFECTED SERVICES.**
  - (c) **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTIONS 8(A) AND 8(B), AND TO THE EXTENT NOT PROHIBITED BY LAW, SELLER MAKES NO OTHER WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE) WITH RESPECT TO THE PRODUCTS AND ASSOCIATED SOFTWARE DELIVERED OR SERVICES PERFORMED HEREUNDER, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF**

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**INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, WHICH EXTEND BEYOND THE DESCRIPTION CONTAINED HEREIN.**

## 9. LIMITATIONS OF LIABILITY.

- (a) **EXCEPT AS OTHERWISE PROVIDED IN SECTION 8, TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY OTHER LOSSES OR DAMAGES, WHETHER INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR OTHERWISE, AND WHETHER DIRECT OR INDIRECT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR CORRUPTION OF DATA, SERVICE INTERRUPTIONS, PROCUREMENT OF SUBSTITUTE SERVICES, LOSS OF PROFITS OR REVENUE, LOSS OF SAVINGS, LOSS OF USE, LOSS OF TIME, LOSS OF GOODWILL, INCONVENIENCE, DIMINUTION OF VALUE, INTERFERENCE WITH BUSINESS RELATIONSHIPS, DAMAGE TO OTHER PROPERTY CAUSED BY ANY DEFECTS IN THE PRODUCTS OR ASSOCIATED SOFTWARE OR SERVICES, OR ANY OTHER COMMERCIAL OR INTANGIBLE LOSSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, IN EACH CASE ARISING OUT OF OR RELATING TO THE PURCHASE, USE OF, OR INABILITY TO USE THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, EVEN IF SELLER KNEW OR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN ADDITION, SELLER SHALL NOT BE LIABLE FOR (A) ANY BODILY INJURY, DEATH, OR PROPERTY DAMAGE ARISING OUT OF THE USE, OPERATION, OR MAINTENANCE OF THE PRODUCTS AND ASSOCIATED SOFTWARE OR PROVIDED HEREUNDER OR (B) ANY CLAIM AGAINST BUYER BY ANY OTHER PARTY.**
- (b) **EXCEPT AS EXPRESSLY REQUIRED BY APPLICABLE LAW, IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY TO BUYER ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT PAID BY BUYER FOR THE PRODUCT OR SERVICE PROVIDED HEREUNDER THAT GAVE RISE TO THE LIABILITY.**

10. **CHANGES.** Seller reserves the right to alter, modify, or redesign its products without any obligation to replace any Products included in previous shipments to Buyer.

## 11. NO LICENSE.

(a) Except as provided in Section 11(b), the sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its subsidiaries, affiliates, or suppliers, it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers. Without limiting the foregoing, Buyer will not, without Seller's prior written consent, use any trademark or trade name of Seller in connection with any of the Products.

(b) If software is provided by Seller under the Agreement, Buyer agrees that the software may only be used in accordance with the terms and conditions of the software license agreement that accompanies the software. Buyer agrees not to directly or indirectly decompile, disassemble, reverse engineer or otherwise derive the source code for the software. If Buyer is a U.S. government agency, Buyer acknowledges that the software licensed under the Agreement is a "commercial item", as that term is defined at 48 C.F.R. §2.101, that has been developed at private expense and not under a government contract. The government's rights relating to the software, if any, are limited to those rights granted to all other end users of the software as set forth herein and is binding on government users in accordance with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1, as applicable.

12. **TERMINATION.** In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer:

- (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of this Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

13. **CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as "confidential," in connection with the Agreement is confidential, shall be used solely for performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 13, without having to post bond or establish the insufficiency of a remedy at law. This Section 13 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

14. **FORCE MAJEURE.** Seller will not be liable or responsible to Buyer, nor will Seller be deemed to have defaulted under or breached this Agreement, for any failures or delays

in performing any term of this Agreement caused by or resulting from acts beyond the reasonable control of Seller, including but not limited to acts of God, fires, floods, pandemics and epidemics, earthquakes, accidents, laws or actions of any governmental authority, war, hostilities (whether war is declared or not), terrorist threats or acts, insurrection or riots, other civil unrest, strikes, labor stoppages or slowdowns, other industrial disturbances, and shortages of labor, energy, raw materials, production facilities, or transportation (each, a "Force Majeure Event". Seller shall resume the performance of its obligations under this Agreement as soon as reasonably practicable after the removal of the cause giving rise to the Force Majeure Event.

15. **COMPLIANCE.** Each party will comply in all material respects with all applicable laws, regulations, and ordinances, and Buyer will comply with the export and import laws and regulations in effect as of the date of shipment of the Products of any country involved in the transactions contemplated by the Agreement. Without limiting the foregoing, each party will comply with all applicable anti-bribery and anti-corruption laws, including the US Foreign Corrupt Practices Act and the UK Bribery Act 2010.

16. **GOVERNING LAW; VENUE; DISPUTE RESOLUTION.**

(a) This Agreement is governed by the laws of the State of Illinois, without reference to rules governing choice of law. Any controversy or claim arising out of or relating to this Agreement shall be settled exclusively by arbitration before a single arbitrator administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Arbitration Rules and Mediation Procedures. **Seller and Buyer each hereby give up the right to resolve any controversy or claim arising out of or relating to this Agreement in court, whether in front of only a judge or in front of a judge and a jury.** Seller and Buyer each agree to arbitrate solely on an individual basis and agree that this Agreement does not permit class arbitration or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding. Neither the AAA nor the arbitrator shall have the power to consolidate more than one person's claims or to otherwise preside over any form of a representative or class proceeding. A judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) No action related to this Agreement may be brought more than two (2) years after the cause of action first accrued.

17. **CHOICE OF LANGUAGE.** It is by the express intention of the parties hereto that this Agreement and all its related documents be drafted in English, which version shall govern and prevail over any translation of this Agreement. Any translation of this Agreement is for convenience only and shall not be binding on the parties.

18. **SURVIVAL.** In addition to any other term which by its nature should remain in force and effect after any termination or expiration of this Agreement, the terms contained in Sections 1, 3, 4, 6, 7, 8, 9, 10, 11, 13, 16, 17, 18, and 19 will survive any termination or expiration of this Agreement.

19. **MISCELLANEOUS.** Buyer acknowledges that it has not been induced to purchase any the Products or Services from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation, together with Seller's Limited Product Warranty, constitute the entire agreement of the parties and supersede all existing or contemporaneous agreements or understandings and all other oral or written communications between them concerning the subject matter hereof. This Agreement may not be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references this Agreement and states that such written document modifies this Agreement. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing that specifically references this Agreement and is signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. All notices and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All notices and other communications shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), certified or registered mail (in each case, return receipt requested, postage prepaid), or email. Any such notice or other communication is effective upon receipt by the receiving party or, in the case of email only, when sent. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision. If any provision of this Agreement is held to be prohibited or unenforceable, the provision will be deemed changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer will not assign or otherwise transfer this Agreement or any of Buyer's rights or obligations hereunder, in whole or in part, without Seller's prior written consent, and any purported assignment or transfer in violation hereof is null and void. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the parties hereto and their respective successors and permitted assigns.