

nextScan Terms and Conditions

1. **APPLICABILITY.** These Terms and Conditions of Sale (“Terms”) apply to the purchase of products and ancillary services (collectively the “Products”) offered by nextScan, a division of Digital Check Corp. (“Seller”) to the buyer (“Buyer”), identified in the accompanying quotation, credit application, proposal, order acknowledgement, or invoice (the “Sales Confirmation”). These Terms and the Sales Confirmation comprise the entire agreement between the parties (collectively, the “Agreement”). Buyer accepts these Terms by signing and returning Seller’s quotation, by sending a purchase order in response to the quotation, or by Buyer’s instructions to Seller to ship the Product. No terms, conditions or warranties other than those identified in the quotation and no agreement or understanding, oral or written, in any way purporting to modify the terms and conditions 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 or to any other terms proposed by Buyer in accepting Seller’s quotation. Neither Seller’s subsequent lack of objection to any terms, nor the delivery of the products or services, shall constitute an agreement by Seller to any terms.
2. **CANCELLATION.** Cancellation or modifications of all or part of any order are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit. The minimum fee for cancellation or modification is 15% of the item price.
3. **GOVERNMENT CONTRACTS.** If Buyer is purchasing the Products or Services for a government contract or sub-contract, Buyer shall promptly notify Seller of that fact and of any contractual terms from the government procurement laws and regulations that Buyer is obligated to include in its contracts for such 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.
4. **PRICE.** All stated prices are exclusive of any taxes, fees, duties, and levies, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement (collectively, “Taxes”). Any Taxes related to the Products purchased pursuant to this Agreement are the responsibility of Buyer, unless Buyer presents an exemption certificate acceptable to Seller and the applicable taxing authorities. If possible, Seller will bill Taxes as a separate item on the invoice presented to Buyer. If any exemption certificate presented by Buyer is held to be invalid, then Buyer will pay Seller the amount of the Tax and any penalties and interest related thereto.
5. **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. 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 or any other breach by Buyer of these Terms. 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 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.
6. **DELIVERY; SHIPPING.** (a) Seller will deliver the Products within a reasonable time after receiving Buyer’s purchase order. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller’s part.
(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 same. 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 purchase order. Buyer is responsible for obtaining any import licenses and other consents required for a Product shipment at its own expense and will provide the licenses and consents to the Seller before shipment.
7. **TITLE; RISK OF LOSS.** (a) Risk of loss or damage passes to Buyer passes upon delivery to the Delivery Location. If Buyer arranges their own shipping risk of loss or damage 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 Seller’s notice 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 resulting from the 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.
8. **INSPECTION; ACCEPTANCE CRITERIA; REJECTION OF PRODUCT**
 - (a) Acceptance of scanning equipment is based solely on the scanner and any RSD or modules purchased. Specifically, a scanner will meet standard performance metrics by scanning 16mm film at 200dpi and 24x reduction ratio at the stated speed to its internal storage or to a nextScan RSD supplied with the scanner or certified by nextScan to function at the listed speed. Performance metrics will be validated prior to connecting the scanner to any Buyer computer network or installing any third party software, including antivirus software. Scan settings such as higher dpi, higher reduction ratios, larger film, or other variables may result in slower scanning speeds than are normal operation of the scanner and do not constitute any failure of a nextScan scanner. Any speed or other performance degradation when connected to a non-nextScan RSD or computer network does not constitute any failure of a nextScan scanner.
 - (b) As used in this Section, “Nonconforming Products” means only the following: (i) the items shipped are different from those identified in Buyer’s purchase order; or (ii) a scanner does not meet the acceptance criteria in (a) above. Buyer will inspect the Products within five (5) days following receipt thereof (the “Inspection Period”) or at the time of any agreed upon installation and/or training included with the Product sale as indicated in the Sales Confirmation. 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. At Seller’s request, Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to Seller at Seller’s expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller’s expense.
 - (d) Buyer acknowledges and agrees that the remedies set forth in this Section 8 are Buyer’s exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 8, Buyer has no right to return the Products to Seller without Seller’s written authorization.
9. **LIMITED WARRANTY.** This warranty covers nextScan Products. It does not apply to non-nextScan equipment such as customer-supplied RSDs.
(a) Seller warrants to Buyer that the Products will be free from defects in material and workmanship for a period of twelve (12) months following the date of delivery to the Delivery Location (the “Warranty Period”). If, prior to the expiration of the Warranty Period, Buyer informs Seller in writing of any breach of this limited warranty, then Seller may repair or replace the Products that gave rise to the breach or, in Seller’s sole and exclusive discretion, refund the amounts that Buyer paid for the Products.
(b) The foregoing limited warranties do not apply to (i) any defect in Products not manufactured by Seller; (ii) any Products manufactured according to Buyer’s specifications, or (iii) any consumable Products.
(c) Buyer will bear the costs of access, de-installation, re-installation and transportation of the Products to Seller. Any repair or replacement pursuant to this limited warranty will not extend the Warranty Period. Seller does not warrant the Products, or any repaired or replacement parts, against normal wear and tear or corrosion. This limited warranty and remedy are expressly conditioned upon: (i) Buyer’s payment of the purchase price in full, (ii) Buyer giving written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Buyer discovers or ought to have discovered the defect, (iii) the storage, installation, operation, use, and maintenance of the Products in compliance with published specifications and instructions provide by Seller or its suppliers or subcontractors (“Instructions”), (iv) the existence of proper records of Buyer’s operation and maintenance of the Products during the Warranty Period, (v) Buyer providing Seller with a reasonable opportunity to examine the Products and the aforementioned records, and (vi) the absence of any unauthorized modification or repair of the Products, including without limitation the removal or alternation of any serial numbers or warranty date decals.

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- (d) THE REMEDIES SET FORTH IN THIS SECTION 9 ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY FAILURE OF SELLER TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION 9. SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL OTHER WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
10. INDEMNIFICATION. Buyer will defend, indemnify, and hold harmless Seller and its subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees (including import and export customs fees), or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) ("Claims") arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer or its employees or agents, (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.
11. LIMITATIONS OF LIABILITY. (a) IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES. (b) EXCEPT FOR DEATH OR BODILY INJURY RESULTING FROM SELLER'S NEGLIGENCE OR WILLFUL MISCONDUCT, SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE GOODS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE CLAIM.
12. CHANGES. Seller reserves the right to alter, modify, or redesign its products without any obligation to replace previous shipments to Buyer.
13. NO LICENSE. (a) Except as provided in Section 13(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 the Products, other than with respect to the resale of the Products pre-marked or packaged by or on behalf of Seller. (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 that has been developed at private expense and not under a Government contract. The Government's rights' relating to the software are limited to those rights applicable to Buyer's as set forth herein and is binding on Government users in accordance with Federal Acquisition Regulation 48 C.F.R. Section 12.212 for non-defense agencies and/or Defense FAR Supplement 48 C.F.R. Section 227.7202-1 for defense agencies.
14. 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 these Terms, 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.
15. 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, solely for the use of 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 15, without having to post bond or establish the insufficiency of a remedy at law. This Section 15 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.
16. FORCE MAJEURE. Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to fires, floods, pandemics, earthquakes, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's sole judgment, is not in Seller's best interest.
17. COMPLIANCE. Each party will comply 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.
18. GOVERNING LAW; VENUE; DISPUTE RESOLUTION. (a) All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Illinois. Any legal suit, action or proceeding arising out of or relating to these Terms will be instituted in the federal or State courts located in the City of Chicago, Illinois. Each party irrevocably submits to the exclusive jurisdiction of the courts in any the suit, action or proceeding. (b) Seller will have the sole and exclusive right to determine whether any dispute, controversy or claim arising out of or relating to the Agreement, or the breach thereof, will be submitted to a court of law or arbitrated. The venue for any the arbitration will be in Chicago, Illinois. The arbitrator's award may be confirmed and reduced to judgment in any court of competent jurisdiction. In the event the matter is submitted to a court, Seller and Buyer hereby agree to waive their right to trial by jury and covenant that neither of them will request trial by jury in any the litigation.
19. CHOICE OF LANGUAGE. It is by the express intention of the parties hereto that the present Agreement and all its related documents be drafted in English.
20. SURVIVAL. In addition to any other term whose context may so require, the terms contained in Sections 1, 5, 7, 8, 9, 10, 11, 13, 15, 18, 19, 20, and 21 will survive any cancellation of the purchase order.
21. MISCELLANEOUS. Buyer acknowledges that is has not been induced to purchase any the Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. 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 these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms 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. 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 changed and interpreted to accomplish the objectives of the provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Buyer will not assign any quotation or accepted order for the Products, in whole or in part, without Seller's prior written consent.