

COLD CHAIN TERMS OF SERVICE



These Cold Chain Terms of Service (“ToS”) are an integral part of the Agreement between Digi International, Inc. (“Digi” or “we” and related pronouns), on behalf of itself and its subsidiary companies (including Fresh Temp and Digi International Canada Inc.) and the customer named in an Order (“you” and related pronouns).

By submitting an Order that references these ToS, you agree to the terms of the Order and these ToS, which together form an agreement (the “Agreement”).

1. Definitions

- 1.1 **“Cloud Service”** means the Software as a Service application and Updates for the System (hosted by us or our third party provider) for the data collection, processing, storage, retrieval or reporting described in the application Documentation for that System.
- 1.2 **“Data”** means the available data collected from use of the System.
- 1.3 **“Documentation”** means our then-current electronic or printed content describing the functions, features, specifications or certifications of the applicable software or product made available by us. Documentation excludes all proposals, demonstrations and marketing, sales and training materials.
- 1.4 **“Gateway”** means a wireless gateway, provided as part of the System, which transfers the data collected via Ethernet, Wi-Fi or cellular internet connection to the Cloud Service.
- 1.5 **“Logger”** means a temperature data collection device (and associated firmware) we may provide as part of the System to log data for inbound and outbound product temperature monitoring.
- 1.6 **“Mobile App”** means the software application and Updates provided as part of the System for download by you to your Mobile Devices(s).
- 1.7 **“Mobile Device”** means a smart phone, tablet or handheld device you supply, compatible with our Mobile App, for use with the System.
- 1.8 **“Order”** means the quote or other ordering document (in paper or electronic form) we provide, which is accepted by you, which references these ToS and describes the type, quantity, delivery, price, payment and/or other terms associated with the System provided that Order. The terms of each Order are incorporated as part of the resulting Agreement.
- 1.9 **“Probe”** means the handheld temperature data collection device for the System (and associated firmware), typically used for measuring the temperature of a product.
- 1.10 **“Products”** means any Sensors, Probes, Loggers, Repeaters and Gateway products we provide to you under the terms of the Agreement.
- 1.11 **“Repeater”** means a cellular repeater device we may provide as part of the System to extend the range of cellular service within a facility.
- 1.12 **“Sensor”** means the temperature data collection device for the System (and associated firmware), typically installed in your cooler, freezer, or walk-in unit via magnetic mount, zip tie or screw mount.
- 1.13 **“Subscription Term”** means the term of the Agreement, during which we will provide the Products and the Service ordered under the terms of the Agreement. The Subscription Term will begin upon shipment or electronic availability of the System elements covered by an Order and, unless earlier terminated under section 7, will have an initial term of twelve (12) months or such other time period set forth in the applicable Order and will, unless either party provides notice of non-renewal at least ninety (90) days before expiration of the then-current term, be subject to automatic renewal for successive twelve (12) month periods or such other time period set forth in the applicable Order.
- 1.14 **“Support”** means our then-current standard support services made generally available to subscribers to the Service.
- 1.15 **“System”** means the system comprising the Products, the Mobile App installed on each Mobile Device, the Cloud Service and Documentation for the respective Product(s) eligible for Support. (System components may vary depending on your needs)

- 1.16 **“Taxes”** means any value-added, sales, use, excise, goods and services, withholding taxes, interest and penalties that are assessed by a governmental authority because of the Agreement, excluding our income taxes and taxes for which you provide us a valid tax exemption certificate.
- 1.17 **“Updates”** means maintenance releases, error corrections, additions, changes, modifications, extensions, new versions and new releases of software or firmware by us for the System, excluding new products or services we elect to sell separately.

2. Subscription and Warranty

- 2.1 **Use.** During the Subscription Term, we will provide you (on a non-exclusive basis) with the Products, the use of the System, and Support in connection with your outstanding Order(s) and under the terms of the Agreement.
- 2.2 **Data.** The System allows access to available Data only through the reporting features of the Cloud Service (under our then current data retention policy). We may use your Data when providing you Support, but we will not otherwise use or disclose your Data (unless all identifying information unique to you has been removed at our expense).
- 2.3 **Cloud Service Terms.** Your use of the Digi Cloud Services will be subject to our then-current Terms of Service, available at <https://www.digi.com/legal/cloud-terms>.
- 2.4 **Cellular Service Terms.** If your System uses cellular wireless services purchased through us, your use of such services will be subject to our then-current standard Terms of Service – Cellular Services, available at <https://www.digi.com/pdf/cellular-wireless-services-tos.pdf>.
- 2.5 **Warranty.** We warrant that the Products we provide under the Agreement will, for a period of twelve (12) months after shipment, conform to the applicable Documentation when used in accordance with the Documentation. Your exclusive remedy for breach of this warranty will be the repair or replacement of any Products we confirm to be non-conforming. This warranty does not cover failures or non-conformance caused by misuse, damage while in your possession, or modifications made without our consent. Battery failures occurring after the warranty period will be subject to a \$15 battery recycling fee per device for Sensors and a \$30 battery recycling fee for Probes. THE WARRANTIES IN THIS SECTION 2.3 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

3. Payment for the System

- 3.1 **“Fees”** means the periodic (e.g. monthly) and/or one time fees listed in an Order for the System described in that Order. The Fees will be invoiced directly by us (unless you arrange to pay the Fees by credit card) if you have been approved for credit which is granted or withdrawn at our sole discretion. When we invoice you directly: (a) our invoices are due NET 30 days from invoice date and (b) we may invoice a monthly late fee of 1.5% of the outstanding balance (or the maximum rate allowed by law, if lower), for invoices not paid in full by the due date. If a Fee has a monthly rate, the billing cycle will begin on the 1st day of the month after the Product has shipped. One time fees are billable as of the Product shipment date. You agree to pay all Fees and invoices, and costs of collection. After termination of the Agreement, you will remain obligated to pay all unpaid invoices and all unpaid Fees accrued through the date of termination. All Fees are payable in the currency used for pricing in the Order and are exclusive of Taxes. You will pay or reimburse us for all applicable Taxes and for any reasonable travel expenses we incur at your request.

4. Updates and Other Changes

- 4.1 **Updates.** When reasonably practical, we will alert customers in advance before releasing Updates. We will install Updates to the Cloud Service and, when reasonably practical, cause Updates to automatically install over the air to Mobile Devices connected with the Cloud Service. If an Update requires that you download the Update to your Mobile Device(s), we will inform you of the required download procedure and you will complete the download.
- 4.2 **Changes to ToS.** We reserve the right, in our sole discretion, at any time and from time to time, to replace, modify, add to or retract/delete all or any portion of these ToS. It is your obligation to review the most recent version of these ToS from time to time, posted at www.digi.com/pdf/coldchaincustomeragreement.pdf to ensure your continued acceptance hereof. Any revisions to these ToS will become effective, and will constitute an amendment to these ToS, twenty (20) business days after such revisions are posted, unless you expressly accept the revised ToS as of an earlier date. Your continued use of the Service after the applicable effective date of such revisions will conclusively establish your acceptance to be bound by the revised ToS. If you have questions about these ToS or the Service, please contact Digi customer support at www.digi.com/support/

5. Your Additional Responsibilities

- 5.1 **Proper Use of Our Intellectual Property.** You will not: (a) provide access to or use the Products, Mobile App or Cloud Service for any purpose separate from our System or (b) allow anyone (including yourself) to disassemble or reverse engineer any components of the System. We may seek an injunction to enforce this Section 5.1.

6. Limitations of Liability

- 6.1 **Exclusions. Neither you nor we will be liable to each other for any indirect, incidental, punitive, exemplary, special or consequential damages, or damages for loss of profits, revenue or data, or will seek those types of damages.**
- 6.2 **Liability.** Our aggregate liability to you for any reason will not exceed the amount of Fees paid by you during the 30-day period immediately before the occurrence of facts giving rise to the claim.
- 6.3 **No Liability for Matters Beyond Our Reasonable Control.** We will not be in breach of the Agreement or liable for damages from any circumstances beyond our reasonable control, including (without limitation) fires, floods, natural disasters, power outages, cybercrime, delays or disruptions by third parties (including without limitation, communications providers or third party service providers).

7. Termination and Return of Products

- 7.1 **Termination.** We may terminate the Agreement and Support by giving at least 90 days advance written notice of termination. If any Fees are more than 10 days past due, we may suspend your use of the System until those Fees have been fully paid. We will continue to invoice during periods of suspension. If any Fees are more than 30 days past due or if you breach the Agreement (and fail to cure that breach within 30 days after notice from us where the breach is curable), we may terminate the Agreement and all Support by notice to you. You will remain responsible to pay, and we will have the right to collect, any unpaid fees.
- 7.2 **Return of Products or Payment for Non-Returned Devices.** The Products will remain our property. If, within thirty (30) days of expiration or termination of the Agreement (or the Subscription Term for a portion of an Order), you return to us at your expense and in good condition the Products being terminated we will not charge you a Termination Fee. For any Products we do not receive within this thirty (30) day period we will invoice you, and you will pay to us within thirty (30) days of the date of invoice \$100 per Sensor, \$250 per Probe and \$150 per Gateway, Logger or Repeater not received.
- 7.3 **End of Cloud Service and Access to Data.** When the Agreement and Support terminates, you will no longer have access to the Cloud Service or the ability to generate reports containing your available Data. If you desire to use the Cloud Service to create reports containing your available Data when the Agreement is scheduled to expire or terminate, you may continue to pay all Fees until you no longer desire access to the Cloud Service (after the Agreement terminates, all remaining Data will eventually be deleted under our data retention policy) unless termination is due to failure to pay fees when they are due or a breach of the Agreement terms.
- 7.4 **Survival.** The rights and obligations under Sections 1, 2.2, 3, 5, 6, 7 and 8 survive any suspension or termination of the Agreement.

8. General.

- 8.1 **Notices.** All “notices” must be in writing and delivered electronically or by other method with proof of delivery. All other communications, requests or alerts may be provided by fax, email, website or other electronic means.
- 8.2 **Assignment.** You must provide us advance notice of any assignment of the Agreement by you which must be approved by us (no partial assignments are permitted by you).
- 8.3 **Disputes.** We and you each waive right to a trial by jury for any disputes under the Agreement. You may not initiate any litigation or other legal claim against us if you have known of the claim for more than one year. We and you will each pay (without reimbursement from each other) any attorney’s fees and expenses incurred in any dispute.
- 8.4 **Laws.** Minnesota law governs the Agreement, regardless of choice of principles.
- 8.5 **Complete Agreement.** The Agreement (including all accepted Orders) contains the complete agreement between you and us (and supersedes any prior agreements between you and us) for any products or services supplied under those Orders. Any terms proposed that are in conflict with or in addition to these ToS are rejected and shall be of no effect unless expressly agreed to in writing by both parties.