

## **Dataquest Solutions Limited. Terms and Conditions of Business**

### **1. Definitions in these conditions of sale**

- (a)** The "Company" and "we" shall mean DataQuest Solutions Limited.
- (b)** The "Conditions" shall mean these Conditions of Sale.
- (c)** The "Purchaser" means the Company, Firm or Business Individual who buys or has agreed to buy Goods.
- (d)** The "Quotation" shall mean any quotation addressed to the Purchaser by the Company including quoted products and prices published in any catalogue or promotional documentation or electronically provided by the Company.
- (e)** The "Goods" shall mean items of any nature that the Purchaser buys or has agreed to buy from the Company.
- (f)** The term "Liability Whatsoever" shall include, without prejudice to the generality of the expression all liability in tort, contract, breach of representation of implied warranty or condition or any other duty at common law or under the expressed terms of the contract including any liability for direct, indirect or consequential loss including but not limited to loss of profit or damage of any kind howsoever caused or arising. The said term will, however, not apply to liabilities in respect of death or personal injury.
- (g)** The "Company's Recommendations for Use" means the Company's recommendations for use (if any) contained in the Company's published literature current at the time of the quotation.
- (h)** "Special Orders" are such Goods that have been provided by the Company, upon the specific specification and/or requirements of the Purchaser.

**1.1** Clause headings are for information only and shall not affect (nor be treated or interpreted so as to affect) construction of these Conditions.

### **2. General**

- (a)** Unless otherwise agreed in writing between the parties acceptance of the Quotation must be communicated by the Purchaser to the Company within thirty days from the date of the Quotation in order to constitute a binding contract.
- (b)** The placing of an order (whether orally, in print or writing) and whether or not based on a Quotation shall be deemed subject to the Conditions shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser and without prejudice to the generality to the foregoing, contained in any order sent by the Purchaser. All orders are accepted only upon the Company's terms and conditions of sale, which shall prevail over any terms and conditions in the Purchaser's documentation, which are inconsistent with those of the Company. The parties agree to be bound by the Company's terms and conditions subject to any written authorised variation, cancellation or waiver.
- (c)** No modification or amendment of the Conditions shall be binding upon the Company unless agreed to in writing by a duly authorised signatory on behalf of the Company.
- (d)** Unless otherwise agreed in writing all descriptions, specifications, drawings and particulars of weights and dimensions submitted by the Company or otherwise contained in the Company's catalogues, brochures, price lists or any other published matter are subject to change without notice and do not form part of a contract or give rise to any independent or collateral liability whatsoever upon the part of the Company. However should the changes occur between a purchaser placing an order and receipt of goods, the goods may be returned and a refund provided where the goods are no longer suitable for the original purpose.

**(e)** The Company shall not be responsible for the suitability or fitness for purpose or any purposes unless specifically agreed in writing between the parties for any electronic part or software supplied.

**(f)** Save as herein provided the Company shall accept no liability for any loss or damage consequential or otherwise attributed to the act, negligence or defaults of the Company or its servants or agents.

### **3. Terms of Payment**

**(a)** Unless otherwise agreed and credit provided, the purchaser will pay for all goods in advance of receipt of either our invoice or proforma invoice or by such other form of method by which cleared funds are received and agreed by the Company.

**(b)** Where a deposit is taken in advance as part payment of the price this deposit is non-returnable, unless the Purchaser has the right to cancel due to reasons provided in these terms and conditions and may be used as, or part of, a re-stocking fee by the Company. Delay in the payment of the deposit risks adjustment to the price for the reasons outlined in Section 5(c).

**(c)** Where payment is made by cheque, it shall not have deemed to have been made until the cheque has been honoured by the drawer's bank and cleared in the Company's bank account.

**(d)** Where the Purchaser has a running account with the Company payment will become due thirty days after the receipt by the Purchaser of the Company's invoice. This credit period may be greater than thirty days only by special arrangement and agreement with the Company and when confirmed in writing. We reserve the right to charge daily on accounts that exceed the stated credit period in accordance with the Late Payment of Commercial Debts Act.

**(e)** Failure to pay the price for any goods supplied or any part of the price thereof or any other monies payable by the Purchaser under these conditions will entitle the Company without prejudice to the Company's other rights or remedy to refuse to make delivery of any further consignment of Goods under this contract or Goods under any other contract and/or to cancel any uncompleted order without reference to the Purchaser and such action shall not be regarded as a breach of these terms and conditions and no liability whatsoever whether direct or indirect or consequential shall attach to the Company in relation thereto whether by means of any counterclaim, set off, indemnity or by any other means howsoever arising.

**(f)** Payments received by the Company shall be applied first in settlement of any charge to interest or other costs or expenses howsoever invoiced or incurred by the Company and thereafter in settling the purchase price or principal sum or sums due to the Company.

### **5. Price**

**(a)** Unless otherwise stated the price of the Goods in respect of contracts for delivery excludes the cost of delivery. Any and all charges for VAT or other applicable taxes and duties and costs including costs of carriage as determined by the Company at date of dispatch shall be payable by the Purchaser to the Company.

**(b)** The Purchaser shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaim or indemnity or otherwise unless expressly agreed in writing by the Company.

**(c)** Unless otherwise stated in writing any Quotation is based on the current cost of materials, labour, transport, overheads and/or other charges and the price quoted is subject to fair adjustment reflecting any alteration in the cost of materials, labour, transport, overheads or other charges incurred by the Company during the period between the date of the Quotation and the date of dispatch.

## **6. Transfer of Property**

**(a)** Legal and beneficial ownership of Goods shall remain with the Company until full payment for the Goods and/or other charges arising under these conditions has been made in full. The risk as to loss or damage of the said Goods shall, however, pass to the Purchaser upon delivery thereof. Until beneficial ownership of the said Goods passes, the Purchaser shall keep the Goods free from any charge, lien or other encumbrance.

**(b)** The Purchaser accepts that until full payment of the purchase price and/or other charges arising under the conditions has been made for the said Goods the Goods are held by the Purchaser in a fiduciary relationship as bailee of the said Goods on behalf of Company.

**(c)** Whilst any payment in respect of the said Goods howsoever and wheresoever arising remains overdue the Company may at any time and from time to time until ownership has passed require the said Goods to be returned to the Company and the Company may take possession of the Goods and may enter the premises of the Purchaser for such purpose and sever the Goods from anything to which they are attached without being liable or responsible for any damage howsoever arising thereby caused. Such return or retaking of possession of the said Goods shall be without prejudice to the obligations of the Purchaser under these conditions and without prejudice to the general rights of the Company.

**(d)** The Company's right to take legal action in respect of any outstanding sums in respect of the price of the Goods and/or other costs shall remain with the Company notwithstanding that beneficial ownership of the said Goods has not passed to the Purchaser.

**(e)** The Company or any person nominated by it shall at any time and from time to time until the payment in full of the purchase price and/or other charges for the Goods have full access to the Purchaser's books of accounts and documents and papers relating to any one or more of the following:

**(i)** The Purchaser's dealings with the Company.

**(ii)** The Purchaser's dealings with the Goods.

**(iii)** The Purchaser's dealings with the proceeds of sale of the Goods.

## **7. Risk**

**(a)** The Goods shall be at the Purchaser's risk from the occurrence of the first point of time of any of the following events: -

**(i)** The physical delivery of the Goods to the Purchaser at the Company's place of business;

**(ii)** The physical delivery of the Goods to the Purchaser's carrier; or

**(iii)** The physical delivery of the Goods to the Purchaser's place of business or home or such other address as notified by the Purchaser to the Company.

**(b)** The Goods shall remain at the Purchaser's risk notwithstanding any subsequent return or retaking of possession by the Company in accordance with these conditions.

**(c)** At the discretion of the Company assistance in recovery of losses due to loss or damage of Goods in transit may be entertained where the company has been informed of any transport damages or losses, without delay and within a period not exceeding 5 working days of receipt or expected receipt. A written confirmation of the carrier regarding such damages has to be sent to the Company. Unless agreed by the Company such assistance will be advisory only and exclude payment by the Company of any fees or other form of compensation to the purchaser or their appointed representatives.

## **8. Delivery**

**(a)** Unless otherwise stated in writing any time or date for the delivery shall run from the date on which acceptance of the order is communicated to the Purchaser. The date stated for delivery that may be given, is intended as an estimate only and will not be a contractual obligation and such time or other time for collection or delivery shall not be deemed to be of the essence in respect of this contract. Failure to deliver by any particular time or date will not entitle the Purchaser to cancel the contract until such a period has elapsed that is two times the maximum that was estimated or ten working days whichever ever is the greater and must be provided in writing. This delay excluding other claims - entitles the purchaser to damages, if that person substantiates that damages have been incurred, for each further full week of delay, payable at a rate of 0,5 % - but not exceeding 5 % in total - calculated on the value (excluding VAT) of that part of delivery which, as a consequence of the delay, cannot be used as intended whatsoever or howsoever arising in respect hereof. All cancellations and claims must be made in writing. The Company will not be liable for any further Liability Whatsoever.

**(b)** The Company shall not be responsible for any delays caused by inclement weather, through its suppliers, human error or any other factor beyond its reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as forces beyond reasonable control:-

- (1)** an act of God, explosion, flood, tempest, fire or accident;
- (2)** war, threat of war, sabotage, insurrection, civil disturbance or requisition;
- (3)** acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;
- (4)** import or export regulations or embargo;
- (5)** loss or damage of goods by carrier;
- (6)** strikes, lock outs or other industrial actions or trade disputes;
- (7)** difficulties in obtaining raw material, labour, fuel, parts or machinery;
- (8)** power failure or breakdown of machinery;
- (9)** failure by the Purchaser to collect Goods or to provide safe and/or adequate storage conditions on site.

**(c)** Delivery of the Goods shall be deemed to have taken place upon the first point in time of any events specified in Conditions 7(a) above. Signature of any delivery note by an agent, employee or representative of the Purchaser or by any independent person shall be conclusive proof of delivery of the Goods.

**(d)** Without prejudice to any rights of the Company hereunder, if the Purchaser shall fail to give on or before the agreed date for delivery all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities (which the Purchaser is obliged under the Conditions or by law to obtain) for forwarding the Goods or shall otherwise cause or request delay, the Purchaser shall pay to the Company all costs and expenses incurred arising from such delay.

**(e)** Unless otherwise stated in writing the Company shall be entitled to make partial delivery or deliveries by instalments and if requested by the Purchaser to arrange carriage, to determine the route and manner of delivery of the Goods at their own discretion and shall be deemed to have the Purchaser's authority to make such contract or agreement with any carrier as to the Company may seem reasonable and prudent.

**(f)** If the Company is prevented from making delivery of the Goods or any part thereof on the agreed date of delivery by any cause whatsoever it shall be entitled at its option either to cancel the contract or to extend the time or times for delivery by a period equivalent to that during which such delivery has been prevented. Such alterations are without prejudice to the generality of the foregoing clauses in respect of matters that are outside the Company's control.

**(g)** Where delivery of the Goods is made in instalments, each instalment shall be construed as constituting a separate agreement to which all the provisions in the

Conditions shall apply.

**(h)** If the Purchaser has been notified by the Company of the Company's ability to supply the Goods and a collection date has been notified to the Purchaser in writing any Goods which remain on the Company's premises after the said collection date due to the failure by the Purchaser to take delivery on the agreed dates and times will be held by the Company solely at the Purchaser's risk and expense and without prejudice to the generality of the foregoing the Company may charge the Purchaser for the reasonable cost of storage and any other additional costs incurred by the Company howsoever and wheresoever arising in respect thereof.

**(l)** No title of any goods, materials or work done (including, for the avoidance of doubt, any intellectual property rights including copyright) shall pass to the Purchaser from the Company until payment in full has been received by the Company of the purchase price and any related costs or charges applying in accordance with these conditions.

### **9. Duty of examination and notification**

After acceptance, the purchaser must examine the goods without delay. Therefore he or she must observe the recognised industry standards. In any case, the purchaser loses the right to rely on a lack of conformity of the goods if he does not give notice to the Company, exactly specifying the nature of the lack of conformity, as soon as he has discovered or ought to have discovered it. After arrangement with the Company the Purchaser is responsible for the securing of all proofs.

### **10. Returns**

**(a)** Goods cannot be returned for refund unless proven by the purchaser not to meet the technical and operational specifications as stated by the manufacturer or Company documentation, or special conditions as laid down in the purchasers order and accepted in writing by the Company. Acceptance of goods for return in any circumstance must be without physical or electrical damage, unless it is deemed that the failure to meet specification was the cause of the damage. The Company accepts no liability whatsoever for Goods returned to it in any other circumstances and such Goods that are returned in breach of these Conditions will not be accepted back, but returned to the Purchaser. The Purchaser shall indemnify the Company in respect of any storage, carriage or any other charges paid or incurred by the Company in connection with the return of such goods that are not acceptable.

**(b)** The Company reserves the right to replace, repair, or provide a refund on goods at our discretion. All Warranties, unless otherwise stated, are of type return to base. Return of goods to the Company address is at the Purchasers risk and expense. We recommend the Purchaser make provision for adequate transit insurance. Being Manufacturer warranties, goods may then be forwarded to the Manufacturer for replacement or repair. For goods under Warranty this carriage and repair is free of charge. Misuse through exceeding operational specification or physical damage is not be covered by any Warranty and will be subject to charge. Liability is restricted only to goods that have not been modified after sale. For goods out of Warranty, advice will be presented to the Purchaser relating to cost, before any repair or replacement. If a mutual agreement is made to proceed, the Company will request an order to cover costs from the Purchaser

Where goods supplied are under Warranty and require returning to the Manufacturer, the Company will arrange carriage and insurance at no further cost to the Purchaser, this will include return of the goods to the Purchaser. The type of carriage will be at our discretion. In exceptional circumstances, where the fault has been clearly established at the Purchasers premises and matters are most urgent, and conditional to acceptance by the Manufacturer, we may agree to the shipping of the Goods direct to said Manufacturer. A formal request must be made to the Company before

proceeding and following the Company will issue returns paperwork and a RMA number for tracking purposes. In this respect the Purchaser must follow the Returns Procedure given in the returns paperwork. Carriage to the Manufacturer will be at the risk and arrangement of the customer. In this case we agree to contribute 50% to the Purchasers carriage cost. A carrier receipt will be required as proof of payment. Please note: For return of goods back to the Purchaser, the Manufacturer may opt to charge the Purchaser for carriage on a priority return where it exceeds their normal delivery cost, if this priority is requested by the Purchaser. The Company will not be liable to cover this addition, however we will cover the normal return delivery, if the Manufacturer does not provide this. These terms and conditions shall apply to the exclusion of any other provisions contained in any other document issued by the Purchaser.

### **11. Loans**

At the Companies discretion equipment may be loaned free of charge to allow the potential Purchaser time to trial the goods considered for purchase. The agreement to loan and the time period of this loan is at the discretion of the company. The potential Purchaser must also arrange carriage and payment for its return of the loaned goods. For carriage purposes the goods must be insured and returned to the Company within 5 working days from the end of the agreed loan period or will be assumed as sold and invoiced. Any extension of the loan period is at the discretion of the Company. On completion of the loan any software included with the loan must be removed from the computer. The potential Purchaser may be given the option to retain the goods by raising an order before the final return date. The potential Purchaser is liable for loss, electrical damage or physical damage to the above system whilst on loan and may be charged for replacement or repair.

### **12. Cancellation - Special Orders**

The Company shall be entitled to full indemnity for all costs, losses and expenses incurred upon the Purchaser cancelling any Special Order, which the Company has accepted, unless failure to deliver has been made as outlined in the conditions of Section 8. Special Orders accepted by the Company may not be cancelled by the Purchaser without the Company's prior written consent and in the event of such consent being given, the Company reserves the right to charge a cancellation fee as a condition thereof. Special Order Goods may not be returned after dispatch by the Company to the Purchaser without the prior written consent of the Company and in the event of the Company giving such consent (subject to the Goods not having deteriorated, depreciated or have been damaged) the Company reserves the right as a condition of such consent to charge a handling fee equivalent to 20% of the purchase of the Goods.

### **13. Carriage**

The Company will automatically arrange carriage of Goods. If requested by the Purchaser, the Company will endeavour to meet special delivery requirements subject to any additional costs being incurred thereby being borne by the Purchaser. The Purchaser may arrange their own carriage by a suitably insured carrier, however acceptance of this arrangement must be by mutual agreement between Purchaser and the Company or the default arrangement will apply.

### **14. Changes required by the Purchaser causing loss or expense to the Company**

All and/or any losses, costs or charges incurred by the Company due to changes required or made by the Purchaser in respect of materials, design, quality or delivery from those set out in the acceptance of the Order shall be immediately payable to the Company by the Purchaser and the Company will be under no liability in respect of

any defects in the goods arising from any drawing, plan, design or specifications supplied by the Purchaser or their failure to meet any purpose or requirement of the Purchaser unless such purpose or requirement was made known to the Company at the time the Purchaser placed the order for such Goods and was agreed in writing by the Company.

#### **15. Force Majeure**

Notwithstanding any other provisions contained in these conditions should the manufacture, processing, supply or dispatch of the whole or any part of the Goods contracted for, be prevented or hindered by any cause or causes whatsoever beyond the Company's reasonable control the Company shall be entitled at its sole discretion to cancel the contract or to postpone or suspend any delivery or deliveries under the contract until such time as the Company have deemed such cause or causes have ceased to operate. The Company shall not be under any liability to the Purchaser in respect of any such cancellation, postponement or suspension in respect of any matters beyond its reasonable control including and without limiting the foregoing any acts of God, legislation, war, fire, flood, drought or other natural calamity, failure of power supply, lock out, strike or other action taken by employees of the Company or any of the Company's suppliers or carriers or sub-contractors in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract or arising from any government act which directly or indirectly interrupt, prevent or hinder the due performance of the said contract.

#### **16. Indemnity against infringement of industrial property rights**

The Purchaser will fully indemnify and hold the Company harmless against any claim or liability in respect of any infringement or alleged infringement of any patent, trademark, registered design or any other like claim resulting from compliance with the Purchaser's instructions either expressed or implied.

#### **17. Data Protection**

We may be required to hold personal information and other information provided by persons who have contacted the Company. We may share this information but only with carefully selected third parties outside Dataquest Solutions Limited, this being for order processing and technical support.

#### **18. WEEE Directive**

DataQuest Solutions Limited Ltd. will at all times abide by the requirements of the WEEE Directive and UK WEEE legislation and fulfil its legal obligations for the financing of WEEE collections from its business customers. Terms and conditions relating to the scheme of collection and disposal provided by our Company are available by request, or may be downloaded from the Company Web site at [www.dqsolutions.co.uk](http://www.dqsolutions.co.uk)

#### **19. Notices and other matters**

Any notice required to be given by either party to the other under these conditions shall be in writing and addressed to that other party at its registered office or last known principal place of business or such other address as may at the relevant time be notified pursuant to this provision to the party giving the said notice.

**(a)** No waiver of the Company of any breach of the terms of the contract or these conditions by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provision.

**(b)** Any provision of these conditions that may be held by any competent authority to be invalid or none enforceable in whole or in part will not render invalid such other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

(c) The Company reserves the right to sub-contract the performance of any obligations under these conditions to a sub-contractor of their choice.

## **20. Law and jurisdiction**

The law of England and Wales shall apply and the English or Welsh Courts shall have sole jurisdiction in respect of any claim or dispute in any way arising from the sale of Goods or the supply of services under these terms by the Company to any customer in any part of the world.



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