

# Terms and Conditions of Business

The following terms and conditions apply to every quotation and to any subsequent supply of Goods (meaning any goods (including any of them or any part of them) which Datafile Software Solutions Limited ("DSS") supplies to the Client and shall include software packages) and/or Services (meaning any services including any of them or any part of them) DSS supplies to the Client whose name and address is given in the order/quotation. Any contract between DSS and the Client for the supply of Goods or Services formed in accordance with clause 2 below shall be referred to in these Terms and Conditions as a Contract.

1. Orders are only accepted subject to, and a Contract shall only be formed upon, these Terms and Conditions to the exclusion of all other terms and conditions (and all previous oral and written representations) including any terms and conditions which the Client purports to apply under any order form, confirmation of order or similar document.
2. Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Client to purchase the Goods or Services upon these Terms and Conditions. The Contract is formed when the order is accepted by DSS, by way of a written acknowledgement of order. No contract will come into existence until a written acknowledgement of the order is issued by DSS.
3. Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Client's acceptance of these Terms and Conditions.
4. The Client may only cancel the Contract on the prior written approval of DSS and any agreed cancellation may be subject to a cancellation charge up to 50% of the total Contract price plus any disbursements or monies paid out on behalf of the Client in pursuance of an order.
5. These Terms and Conditions may only be varied or amended in writing signed by an authorised representative of DSS.
6. Any information contained in any printed or written material of DSS is, to the best of its knowledge, accurate at the time, but does not form part of the Contract. DSS does not accept any liability to the Client for any errors or omissions.
7. The quantity and description of the Goods and Services will be as set out in the order form / quotation.
8. Prices charged will be those valid on the date of despatch, supply or installation of order unless a written quotation to the Client is still valid at the time, in which case the quoted price will take precedence. Quotations remain valid for a period of 30 days from the quotation date, or such alternative period that may be agreed in writing.
9. Prices quoted are exclusive of Value Added Tax or other applicable sales tax or duty [and any costs of packaging and carriage of the Goods] which shall be added to the sum in question.
10. Credit terms for account customers are subject to references that are satisfactory to DSS. Where credit terms are granted by DSS, DSS may invoice the Client for the Goods on or any time after delivery and the Services on or at any time after performance commences. Payment terms for new business, business where credit terms are not offered and orders deemed by DSS as major projects will be quoted on an individual basis, but DSS reserves the right to require full payment in advance in its absolute discretion.
11. Subject to clause 10 above, all invoices must be paid within the period agreed, or if no period is agreed then within 30 days of the date of invoice. Time for payment will be of the essence. No payment will be deemed to have been received until DSS has received cleared funds. All sums payable to DSS under the Contract will become due immediately upon termination of the Contract.
12. All payments to be made by the Client under the Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Client is required by law to make any such deduction or withholding.
13. If any sum payable under the Contract is not paid when due then, without prejudice to DSS's other rights under the Contract, DSS will be entitled to suspend deliveries of the Goods or performance of the Services (or any other goods/services to be supplied by DSS to the Client) until the outstanding amount has been received by DSS from the Client.
14. DSS will use reasonable endeavours to deliver the Goods and/or perform the Services within the time agreed when the Client places an order and, if no time is agreed, then within a reasonable time, but the time of delivery and/or performance will not be of the essence. If, despite those endeavours, DSS is unable for any reason to fulfil any delivery or performance on the specified date, DSS will not be in breach of the Contract, nor (for the avoidance of doubt) will DSS have any liability to the Client for any delay or failure in delivery and/or performance. Any delay in delivery and/or performance will not entitle the Client to cancel the order, unless the delay exceeds 90 days and is solely due to the fault of DSS.
15. Risk of damage to or loss of the Goods will pass to the Client on delivery. Ownership of the Goods will not pass to the Client until DSS has received in full (in cash or cleared funds) all sums due to it in respect of: the Goods; and all other sums which are or which become due to DSS from the Client on any account [and if the Client purports to sell the goods before payment, the proceeds from the sale shall belong to DSS until payment in full for the Goods has been received by DSS.
16. Until ownership of the Goods has passed to the Client, the Client shall: hold the Goods on a fiduciary basis as bailee for DSS; store the Goods (at no cost to DSS) separately from all other Goods of the Client or any third party in such a way that they remain readily identifiable as DSS's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition insured on DSS's behalf for their full price against all risks to the reasonable satisfaction of DSS, and will whenever requested by DSS produce a copy of the policy of insurance.
17. The Client grants DSS, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where payment for the Goods is overdue, to recover them.
18. The Client undertakes to comply strictly with any licence requirements on software supplied by DSS that are imposed by DSS. Such licence terms will be provided with the software and are available from DSS upon request. Software from third parties is supplied by DSS according to the manufacturer's specification. It is the Client's responsibility to confirm that all

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- software, whether manufactured by DSS or by third parties, suit the Client's purposes prior to purchasing them. Software is licensed only and no intellectual property rights shall vest in or be assigned to the Client.
19. DSS accept no liability to the Client arising from a failure on the part of the Client to adhere to the licensing requirements of any software supplied to it by DSS.
  20. Upon delivery of the software (and modifications) the Client shall promptly carry out appropriate tests to satisfy itself that the software (and modifications) performs in all material respects in accordance with the relevant documentation supplied by DSS. If the software (and modifications) does not perform in all material respects with the relevant documentation supplied by DSS, DSS shall correct or replace the software (and modifications) provided that DSS has received notice of the defect within 30 days of delivery and unless: a) the Client has failed to check that the software (and modifications) meet its requirements before entering into the Contract; b) the failure relates to facilities or functions not included in the relevant documentation supplied by DSS; or c) the defects are caused by unauthorised changes to the software (and modifications), failure to operate the software (and modifications) in accordance with the relevant documentation supplied by DSS or inadequately trained or unauthorised people operating the software (and modifications). If DSS cannot fix the defect DSS's entire liability to the Client for that failure is limited to refunding the fees paid by the Client for the relevant software (and modifications). If DSS refunds such fees, the Client must return the software and all relevant documentation to DSS.
  22. DSS warrants that the Services will be provided with such reasonable care and skill as can be expected from a supplier of services of a type similar to the Services. In the event that any part of the Services provided do not conform to this warranty, DSS will, at its discretion, either take such steps as are necessary to remedy the shortcomings as soon as is practicable or refund an appropriate part of the price therefor. This is on the proviso that these remedies will constitute an entire discharge of DSS's liability under this warranty and the liability of DSS shall in no event exceed the price for such Services.
  23. **DSS does not exclude its liability (if any) to the Client: for breach of DSS's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Sale and Supply of Goods and Services Act 1982; for personal injury or death resulting from DSS's negligence; under section 2(3) Consumer Protection Act 1987; for any matter which it would be illegal for DSS to exclude or to attempt to exclude its liability; or for fraud. Except as expressly provided for in these Terms and Conditions, DSS will be under no liability to the Client whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of revenue, loss of contract, loss or depletion of goodwill and/or business opportunity, loss of anticipated earnings or savings and like loss and loss of use or value of any data or software) howsoever caused arising out of or in connection with the Contract.**
  24. **Except as set out above, DSS hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these terms and conditions) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Client.**
  25. The Client acknowledges that the above provisions of clauses 23 and 24 are reasonable and reflected in the price which would be higher without those provisions, and the Client will accept such risk and/or insure accordingly.
  26. It is the Client's responsibility to ensure that adequate backup copies of system, program and data files are taken. DSS may advise on the frequency and method of such backing up, but will not take any responsibility for any problems arising from inadequate backup process or availability.
  27. DSS will not be liable to the Client for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control of DSS including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies and DSS will be entitled to a reasonable extension of time for performing such obligations.
  28. DSS may by written notice terminate the Contract immediately if the Client is in material breach of the Contract or enters into insolvency, bankruptcy, any arrangement with its creditors or any other arrangement or situation which has a like effect, or, being a company, has a receiver, manager or administrative receiver appointed over any of its assets, undertaking[s] or income, has passed a resolution for its winding-up, is subject to a petition presented to any Court for its winding-up, has a provisional liquidator appointed, has an administrator appointed in respect of it or is the subject of an application for or a notice of appointment of an administrator or a notice of intention to appoint an administrator, ceases to trade or is the subject of a notice to strike off the register at Companies House. Failure to pay any sums due in accordance with these Terms and Conditions is a material breach of the terms of the Contract which is not capable of remedy. The termination of the Contract howsoever arising is without prejudice to the rights, duties and liability of either the Client or DSS accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be in force notwithstanding termination.
  29. If any condition or part of the Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from the Contract and will be ineffective, without, as far as is possible, modifying any other provision or part of the Contract and this will not affect any other provisions of the Contract which will remain in full force and effect.
  30. No failure or delay by DSS to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of any other right, power or remedy.
  31. The Contract is personal to the Client who may not assign or sub-contract all or any of its rights or obligations under the Contract without DSS's prior written consent (not to be unreasonably withheld).
  32. The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

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33. The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English courts will have exclusive jurisdiction to settle any dispute which may arise out of, or in connection with the Contract. The parties agree to submit to that jurisdiction.
34. The Client agrees that it will not, without the prior written consent of DSS, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise: (i) solicit or entice, or endeavour to solicit or entice, away from the DSS; or (ii) employ, engage or offer employment or engagement to, any person employed by or contracted to DSS during the immediately preceding 12 month period. Should such a person be engaged, employed or otherwise used by the Client in breach of this provision, the Client shall pay the other party a fee equivalent to 50% of the relevant individual's annual remuneration, or of such fee as is likely to be the equivalent thereto.