

## 1 Interpretation

The definitions and rules of interpretation in this condition apply in these conditions.

### 1.1 Definitions:

<b>Contract</b>	the Customer's order and Datcom's acceptance of it in accordance with condition 3.3.
<b>Customer</b>	the person, firm or company who purchases Equipment from Datcom.
<b>Datcom</b>	Datcom LLP (Company Number OC357115) whose registered office is Lynx House, Elmer Street South, Grantham, Lincolnshire NG31 6QY.
<b>Equipment</b>	the equipment agreed in the Contract to be purchased by the Customer from Datcom (including without limitation any part or parts of it).
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Order Confirmation</b>	means a written confirmation from Datcom of the acceptance of the Quotation by the Customer.
<b>Quotation</b>	Datcom's quotation for the Equipment, and Software (if applicable)
<b>Software</b>	any operating system installed on the Equipment.
<b>VAT</b>	value added tax chargeable under English law for the time being and any similar additional tax.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Contract under that statute or statutory provision.

## 2 Application of conditions

2.1 These conditions shall:

2.1.1 apply to and be incorporated in the Contract; and

2.1.2 prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on Datcom unless in writing and signed by a duly authorised representative of Datcom.

## 3 Basis of sale

3.1 Any quotation is valid for a period of 30 days only, and Datcom may withdraw it at any time by notice to the Customer.

3.2 Each acceptance of a Quotation for Equipment by the Customer shall be deemed to be an offer by the Customer subject to these conditions. The Customer shall ensure that the Quotation is complete and accurate before notifying Datcom that it wishes to accept it.

3.3 A binding contract shall not come into existence between Datcom and the Customer unless and until Datcom issues an Order Confirmation to the Customer, or Datcom delivers the Equipment to the Customer (whichever occurs earlier).

3.4 Datcom may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the applicable Contract. Each instalment shall be a separate Contract and no cancellation or termination by either party of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

- 3.5 No order which has been acknowledged by Datcom may be cancelled by the Customer, except with the agreement in writing of Datcom and provided that the Customer indemnifies Datcom in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Datcom as a result of cancellation.

#### 4 **Quantity and description**

- 4.1 The quantity and description of the Equipment shall be as set out in Datcom's Order Confirmation, or (if there is no Order Confirmation) the Quotation.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising issued by Datcom, and any descriptions or illustrations contained in Datcom's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of the Contract.
- 4.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Datcom shall be subject to correction without any liability on the part of Datcom.
- 4.4 Datcom reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment which are required to conform with any applicable legislation or, where the Equipment is to be supplied to the Customer's specification, which do not materially affect their quality or performance. Where Datcom is not the manufacturer of the Equipment, Datcom shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to Datcom.

#### 5 **Prices**

- 5.1 All prices shall be as stated in Datcom's Order Confirmation (or if there is no Order Confirmation), the Quotation. Unless otherwise stated, all prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 5.2 Datcom reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Equipment as has not been delivered to reflect any increase in the cost to Datcom which is due to market conditions or any factor beyond the control of Datcom (including without limitation any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Datcom adequate information or instructions.

#### 6 **Payment**

- 6.1 Subject to any special terms agreed in writing between the Customer and Datcom, Datcom may invoice the Customer for the price of the Equipment on or at any time after delivery of the Equipment, unless:
- 6.1.1 the Equipment is to be collected by the Customer; or
- 6.1.2 the Customer wrongfully fails to take delivery of the Equipment,
- and in either case Datcom shall be entitled to invoice the Customer for the price at any time after Datcom has notified the Customer that the Equipment is ready for collection.
- 6.2 Unless otherwise stated in the Order Confirmation (or if no Order Confirmation has been provided, the Quotation), the terms of payment shall be within 30 days of the date of Datcom's invoice, whether or not delivery has taken place or title in the Equipment has passed to the Customer. Time for payment of the price shall be of the essence.
- 6.3 If the Customer fails to make payment in full on the due date, the whole of the balance of the price of the Equipment then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to Datcom, Datcom shall be entitled to:
- 6.3.1 terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
- 6.3.2 appropriate any payment made by the Customer to such of the Equipment (or the Equipment supplied under any other contract between the Customer and Datcom) as it thinks fit (despite any purported appropriation by the Customer);
- 6.3.3 charge interest on the amount outstanding from the due date to the date of receipt by Datcom (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of HSBC Bank Plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. Datcom reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;

6.3.4 suspend all further manufacture, delivery, installation or warranty service until payment has been made in full.

6.4 All sums payable to Datcom under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This condition 6.4 is without prejudice to any right to claim for interest under the law, or any right under the Contract.

6.5 Datcom may, without prejudice to any other rights it may have, set off any liability of the Customer to Datcom against any liability of Datcom to the Customer.

## 7 **Delivery of Equipment and acceptance**

7.1 Datcom shall use its reasonable endeavours to deliver the Equipment on the date or dates specified in Datcom's Order Confirmation, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment and Datcom is not in any circumstances liable for any delay in delivery, however caused.

7.2 The Equipment may be delivered by Datcom in advance of the quoted delivery date on giving reasonable notice to the Customer.

7.3 Delivery shall be made during normal business hours (excluding bank or public holidays). Datcom may levy additional charges for any deliveries made outside such hours at the Customer's request.

7.4 The Customer shall be responsible (at the Customer's cost) for preparing the delivery location for the delivery of the Equipment and for the provision of all necessary access and facilities reasonably required to deliver and install the Equipment. If Datcom is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, Datcom may levy additional charges to recover its loss arising from this event.

7.5 The Customer shall be deemed to have accepted the Equipment when the Customer has had 7 days to inspect it after delivery and has not notified Datcom in writing of a defect within this period.

7.6 Datcom shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to Datcom (or its carrier, if applicable) within three days of delivery or the proposed delivery date of the Equipment and that the Equipment has been handled in accordance with Datcom's stipulations. Any remedy under this condition 7.6 shall be limited, at the option of Datcom, to the replacement or repair of any Equipment which is proven to Datcom's satisfaction to have been lost or damaged in transit.

## 8 **Risk and property**

8.1 The Equipment shall be at the risk of Datcom until delivery to the Customer at the place of delivery specified in Datcom's acknowledgement of order, save that Datcom shall off-load the Equipment at the Customer's risk.

8.2 Title in the Equipment shall pass to the Customer on the later of completion of delivery (including without limitation off-loading), or when Datcom has received in full in cleared funds all sums due to it in respect of:

8.2.1 the Equipment; and

8.2.2 all other sums which are or which become due to Datcom from the Customer on any account.

8.3 Until ownership of the Equipment has passed to the Customer under condition 8.2, the Customer shall:

8.3.1 hold the Equipment on a fiduciary basis as Datcom's bailee;

8.3.2 store the Equipment (at no cost to Datcom) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as Datcom's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and

8.3.4 keep the Equipment insured on Datcom's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of Datcom, ensure that Datcom's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for Datcom and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

8.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in condition 15 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to Datcom on the due date.

8.5 The Customer grants Datcom, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by Datcom in repossessing the Equipment shall be borne by the Customer.

8.6 On termination of the Contract for any reason, Datcom's (but not the Customer's) rights in this condition 8 shall remain in effect.

- 8.7 Datcom may appropriate payments by the Customer to such Equipment as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## 9 Inspection and testing of Equipment

- 9.1 Datcom shall:
- 9.1.1 with reasonable skill and care test, and inspect the Equipment on delivery to ensure that it complies with the requirements of the Contract; and
  - 9.1.2 if so requested by the Customer, give the Customer reasonable advance notice of such tests (which the Customer shall be entitled to attend).

## 10 Software licence

- 10.1 If Datcom refers to a software licence in the Order Confirmation, the price of the Equipment includes the licence fee for the Customer's right to use the Software.
- 10.2 If the Customer is provided with any operating system software licence in respect of the Software, the Customer shall sign and return it to Datcom within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis.
- 10.3 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- 10.3.1 the Customer shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement, or for normal operation of the Equipment), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Datcom's prior written consent;
  - 10.3.2 the Customer shall not use the Software on any equipment other than the Equipment, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - 10.3.3 such licence shall be terminable by either party on 28 days' written notice, provided that Datcom terminates only if the continued use or possession of the Software by the Customer infringes the developer's or a third party's rights, or Datcom is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and
  - 10.3.4 on or before the expiry of this licence, the Customer shall return to Datcom all copies of the Software in its possession.

## 11 Customer's responsibilities

- 11.1 The Customer shall provide Datcom's employees and all other persons duly authorised by Datcom with full, safe and uninterrupted access to the Customer's premises and IT infrastructure (including both hardware and software), as may reasonably be required for the purpose of installing and testing the Equipment. The Customer shall provide such telecommunication and such other facilities as are reasonably required by Datcom for testing and diagnostic purposes at the Customer's expense. Where Datcom's personnel are working at any of the Customer's premises the Customer shall provide adequate working space and office facilities for use by Datcom's personnel and take reasonable care to ensure their health and safety.
- 11.2 The Customer shall ensure that it maintains appropriate insurance in respect of those activities carried out by Datcom's employees under condition 11.1 above.
- 11.3 For all Equipment sold in the UK which falls under the WEEE Regulations 2013, the Customer shall ensure that they follow the manufacturer's directions for disposal and recycling thereof, information in relation to this can generally be found either accompanying the Equipment or on the manufacturer's website. Datcom shall not be responsible for any costs arising in relation to this condition 11.3.

## 12 Limitation of liability

- 12.1 The following provisions set out the entire financial liability of Datcom (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 12.1.1 any breach of the Contract howsoever arising; and
  - 12.1.2 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising out of or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- 12.3 Nothing in these conditions excludes or limits the liability of Datcom for:
- 12.3.1 death or personal injury caused by Datcom's negligence; or
  - 12.3.2 fraud or fraudulent misrepresentation.

- 12.4 Subject to condition 12.2 and condition 12.3:
- 12.4.1 Datcom shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- (a) loss of profits; or
  - (b) loss of business; or
  - (c) depletion of goodwill or similar losses; or
  - (d) loss of anticipated savings; or
  - (e) loss of goods; or
  - (f) loss of contract; or
  - (g) loss of use; or
  - (h) loss or corruption of data or information; or
  - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 12.4.2 Datcom's total liability in contract, tort (including without limitation negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Equipment under condition 5, plus damages limited to 50% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Customer in obtaining alternative equipment and/or services.

### 13 Intellectual Property Rights

- 13.1 If Datcom manufactures the Equipment, modifies, or applies any process to it, in accordance with a specification submitted or prepared by the Customer or any other information provided by the Customer, the Customer shall indemnify and keep indemnified Datcom against all losses, damages, costs, claims, demands, liabilities and expenses (including without limitation consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) awarded against or incurred by Datcom in connection with, or paid or agreed to be paid by Datcom in settlement of, any claim for infringement of any third party Intellectual Property Rights which results from Datcom's use of the Customer's specification or such other information. The indemnity shall apply whether or not the Customer has been negligent or at fault and does not limit any further compensation rights of Datcom.
- 13.2 The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Equipment are and shall remain the sole property of Datcom or (as the case may be) third party rights, owner.
- 13.3 Datcom shall retain the property and Intellectual Property Rights in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of Datcom.
- 13.4 In relation to the Software:
- 13.4.1 the Customer acknowledges that it is buying only the media on which the software is recorded and the accompanying user manuals;
- 13.4.2 nothing contained in these conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
- 13.4.3 the Customer shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence Contracts, terms of use and registration requirements relating to them.

### 14 Confidentiality and Datcom's property

- 14.1 Each party shall keep strictly confidential all information concerning the business and affairs of the other (including any trade secrets and information of commercial value) obtained pursuant to these conditions or the Contract, or prior to and in contemplation of either of them, shall use the same exclusively for the purposes of the Contract, and shall disclose the same only to those of its professional advisers to whom and to the extent that such disclosure is reasonably necessary for the purpose of the performance of such Contract or to the extent that such disclosure is required by law.
- 14.2 The obligations of confidence contained in condition 14.1 shall survive the termination of this Agreement however arising but shall not apply:
- 14.2.1 to any information which the receiving party can demonstrate was already in its possession and at the its free disposal prior to receipt under the circumstances mentioned in condition 14.1;

- 14.2.2 is subsequently disclosed to that party without any obligation of confidence by a third party who has not derived it directly or indirectly from the disclosing party;
- 14.2.3 or enters the public domain through no act or default of the receiving party; or
- 14.2.4 where the other party has given prior written approval of a disclosure.

14.3 Subject to the provisions of condition 14.2 above, all materials, equipment and tools, drawings, specifications and data supplied by Datcom to the Customer shall be confidential information, and shall at all times be and remain the exclusive property of Datcom, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Datcom, and shall not be disposed of or used other than in accordance with Datcom's written instructions or authorisation.

14.4 This condition 14 shall survive termination of the Contract, however arising.

## 15 Termination

15.1 Without prejudice to any other right or remedy available to Datcom, Datcom may terminate the Contract or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous Contract or arrangement to the contrary if:

- 15.1.1 the Customer commits any material breach of these conditions provided that if such breach is capable of remedy, the contract shall only be terminated where the Customer has not remedied such breach within 5 days of having been given notice in writing of such breach;
- 15.1.2 the Customer becomes insolvent or goes into liquidation, receivership or administration; has an administrator appointed; is wound up; has an encumbrancer take possession or any of its assets; enters into a composition or arrangement with its creditors; being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for dissolution of the partnership; or takes or suffers any similar or analogous action in any jurisdiction.

15.2 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.

15.3 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

## 16 Force majeure

Datcom reserves the right to defer the date of delivery, or to cancel the Contract or reduce the amount of Equipment ordered, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of Datcom or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Force Majeure Event**).

## 17 Waiver

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## 18 Severance

If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this Contract.

## 19 Entire agreement

19.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that in entering into this Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.

19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

19.4 Nothing in this condition shall limit or exclude any liability for fraud.

**20 Assignment**

20.1 The Customer shall not, without the prior written consent of Datcom, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20.2 Datcom may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**21 Third party rights**

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

**22 Notices**

All notices or other documents to be given under these conditions shall be in writing and shall be delivered by hand or sent by post on a "guaranteed delivery" basis or by e-mail or facsimile to the party concerned at the addresses set out in the Order Confirmation or such other address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the addressee if delivered, upon delivery; if posted, on the second working day following the date of posting.

**23 Governing Law and Jurisdiction**

Each party irrevocably agrees that the Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation disputes or claims) are governed by and construed in accordance with the law of England and that the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.