

These General Terms set out the terms and conditions on which Datacom provides Products and Services to you.

“**Datacom, we, us**” means Datacom Systems Limited or any of its Related Companies.

“**Business Day**” means Monday to Friday inclusive, excluding national public holidays and applicable provincial anniversary days.

“**Loss**” means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

“**Products**” means all hardware or related equipment (including any Software) and all other goods or property which are supplied by us to you (or any of your Related Companies).

“**Related Company**” has the meaning given in the Companies Act 1993, read as if the expression includes any body corporate and any company incorporated under the law of any jurisdiction.

“**Services**” means all services which are supplied by us to you (or any of your Related Companies) and includes services described in any SOW or written agreement with you and any Products provided as part of a Service.

“**Software**” means all system software, application software, software tools and software utilities which are supplied by us to you (or any of your Related Companies) and includes any software provided as part of a Product or Service.

“**SOW**” means a statement of work, service schedule or addendum, quote or order form.

Supply of Products & Services

- We will supply the Products and/or Services to you as agreed between us in writing or as set out in a SOW. Any amendment to Product or Service orders must be agreed by the parties in writing.
- We will use all reasonable endeavours to meet the timings agreed for completion of the Services. You agree that our ability to meet these dates may depend on you providing us with any required information, participating promptly in reviewing material we have produced or otherwise providing us with the inputs we need from you.
- We will comply with your reasonable on-site policies and procedures where applicable to the Services, and where these are notified to us in advance. We reserve the right to increase our charges where any policy causes us to incur additional costs.

Delivery of Products

- Unless otherwise agreed in writing, the Products will be delivered on the delivery date and at the location specified in the relevant SOW, and you agree to take possession of the Products at that time. We reserve the right to deliver the Products by instalment.
- Where delivery is delayed for any reason, we use best endeavours to provide you notice of the delay. Datacom will not be liable to you or any other party for any loss sustained due to delay and we reserve the right to cancel delivery of Products or instalments without prejudice to our rights to recover all sums owing to us in respect of deliveries already made.
- In the circumstance where we store Products for you or on your behalf and you fail to collect or accept any Product by the delivery date specified, you agree to pay our reasonable storage costs until you collect or accept those Products.

Responsibility and Title

- Responsibility for the Products we supply to you will pass to you on delivery. Title in Products supplied by us will not pass to you until you have fully paid us for the Products.
- Until title to the Products passes from us to you in respect of any Products we supply you, you will:
 - be deemed to be acting as our bailee in respect of those Products;
 - if required by us, store those Products in a manner that makes it clear that they are still owned by us, and keep them separate from any other Products; and
 - if you resell those Products, you will hold any proceeds of sale on account for us. You must not represent to any person that you have the authority to act for us.

Security Interest

- You:
 - grant us a security interest in the Products (and the proceeds of sale of the Products) as security for all of your obligations to us (including the purchase price for the products), which we may register or perfect in any means possible in the applicable jurisdiction to ensure that we have an enforceable security interest against you and the Products (and any proceeds of sale of the Products);
 - agree to do all things and execute or arrange for execution all documents we require to ensure we perfect a security interest in the products in the relevant jurisdiction;
 - will indemnify us for any costs we incur in registering, maintaining, discharging and/or enforcing the security interest created by these terms;
 - agree that sections 114(1)(a), 117(1)(c), 133 and 134 of the Personal Property Securities Act 1999 (PPSA) will not apply on the enforcement by us of any security interest created or provided for by these General Terms to which Part 9 of the PPSA applies. You waive any rights you may have under sections 116, 119, 120(2), 121, 125, 129 and 131 of the PPSA on such enforcement, and you waive any right you have under section 148 of the PPSA to receive from us a copy of any financing statement, financing change statement or verification statement that is registered, issued, or received at any time in relation to these General Terms; and
 - agree not to assign, charge, encumber, mortgage, or permit any lien to

arise over, or any security interest (other than ours) to attach to the products, without our prior written consent.

Product Returns

- Once an order is confirmed by us, return of Products and application of any credits is at our absolute discretion, unless there is a fault or delivery error.

Services Output

- We will perform the Services with all due care and skill. Our proposed assigned personnel have the necessary expertise and experience to properly perform the Services.
- You agree that you are responsible for ensuring that the Services and the deliverables fit your business needs and generally meet your requirements.
- Subject to section 15, and excluding any third party intellectual property rights, you will own all intellectual property rights in the materials we provide in delivering the Services. This clause assigns all those rights to you.
- Subject to any third party intellectual property rights, we will own all pre-existing rights in relation to existing intellectual property that is used in performing the Services or creating the deliverables. Subject to your due performance of your obligations under these terms, we grant you a non-exclusive licence to use any of this intellectual property if it is incorporated in any deliverable – but only to the extent necessary to use that deliverable, and you may only use our intellectual property internally for the purposes of your business. Examples of this type of intellectual property include pre-existing templates, tools, processes, software, methodologies and standard-form documents we use in performing the Services or providing the deliverables.
- Nothing in these General Terms prevents us from using our skills, ideas, techniques, experience, know-how and methodologies in the future.
- We will indemnify you against any Loss directly arising out of any third party claim alleging that the performance of the Services or your use of the deliverables infringes the intellectual property rights of any third party.
- You must notify us promptly of any claim, and we may at our option, handle that claim's defence. On request, you will provide us with all reasonable assistance with any claim, and you agree not to do anything to prejudice the settlement or defence of any claim.
- You agree to review any Services or deliverables provided, and where they do not materially meet the requirements specified in the SOW or otherwise agreed in writing between us, we may at our option either in respect of any part of the Services or deliverables:
 - replace or re-perform that part at no additional cost to you; or
 - refund to you an appropriate portion of the charges paid in respect of that part.
- You authorise Datacom to act on your behalf to license to you any applicable third party intellectual property rights, as set out in the relevant SOW. You agree to use any third party intellectual property rights included in a deliverable, subject to the applicable terms and conditions of that third party's intellectual property licence.

Charges

- You will pay the charges for the Products or Services indicated on the invoice, or other similar document issued by us.
- The charges payable will include GST and any other taxes, duties, and levies payable in respect of the supply of the Products or Services as at the date of the invoice.
- We may alter our standard rates making up the charges without notice from time to time. These prices may differ from the rates quoted or the rates current when the services were originally ordered by you.
- You will make all payments due to us in full without any deductions, whether by way of set off, counter-claim, or any other equitable or legal claim.

Payment

- Unless otherwise specified by us, all payments must be made in full without set off or deduction, by the 20th of the month following the invoice date.
- In the event that:
 - any amount payable by you to us is overdue, or you fail to meet any other obligation owed to us (whether in relation to the sale of products or otherwise), or in our reasonable opinion you are likely to be unable to meet your payments or other obligations owed to us;
 - you commit or suffer any insolvency event (bankruptcy, insolvency, liquidation, receivership, official management or similar), or unable to pay your debts as they fall due; or
 - the ownership or effective control of your business is transferred or is about to be; or
 - you breach any of these terms,
 then in addition to and without prejudice to our other remedies:
 - we may cancel all or any part of any contract which remains unperformed;
 - all amounts outstanding under any contract with us for services we have provided to you will immediately become due and payable; and/or
 - you will indemnify us against any costs we incur due to your actions.
- If you fail to pay any undisputed invoice, or any undisputed part of an invoice, we may:
 - charge you interest on the amount due (calculated on a daily basis from the due date) at a rate equivalent to Datacom's applicable bank overdraft rate plus 3%; and
 - withhold any further products or services until the debt is fully paid.

Confidential information

28. Both of us may only use each other's confidential information for the proper performance of respective obligations under these General Terms. Each of us must keep the other's confidential information secure in accordance with usual security practices.
29. Each of us must not disclose each other's confidential information, and will ensure that their employees, contractors and agents do not disclose it, to any other person except as required for the proper performance of respective obligations under these General Terms and on a confidential basis.
30. Each of us will inform the other as soon as possible if they:
 - (a) become aware or suspect that there has been any unauthorised disclosure of the confidential information; or
 - (b) are required by law to disclose the confidential information.
31. At the end of any contract or if requested earlier, each of us will return or destroy (at each other's option) the other's confidential information, and all copies of it (other than that information required to be retained for audit or regulatory purposes).

Limitation of Liability

32. A party will be liable under or in relation to these General Terms only to the extent that the party has breached this agreement.
33. Subject to clauses 34-36, to the extent permitted by law the maximum liability of each party under or in relation to these General Terms will be:
 - (a) the charges paid or payable under the relevant SOW during the 12 months immediately before the breach of that SOW that gave rise to the liability; less
 - (b) any amount paid or payable under that SOW for third party intellectual property rights or equipment to be provided by Datacom.
34. Neither party will be liable for:
 - (a) any indirect or consequential Loss, including Loss of profit, revenue, savings or opportunity; and
 - (b) any economic Loss, including Loss of profit, revenue, savings or opportunity; and
 - (c) the Loss of any third party who is not a Related Company.
35. The limit of liability in clause 33 will not apply if the liability is due to the breaching party's:
 - (a) breach of its confidentiality obligations;
 - (b) breach of its obligations under the Intellectual Property Rights provisions;
 - (c) fraud;
 - (d) wilful breach; or
 - (e) failure to pay any amount due and owing under a SOW.
36. Datacom will not be liable due to:
 - (a) an event of circumstance where you or your personnel, contractors, or representatives have:
 - (i) acted or omitted to act in way that causes Datacom to breach these General Terms;
 - (ii) given an instruction, direction or requirement, which would cause or have caused Datacom to breach the law, these General Terms or an agreement between Datacom and a third party; or
 - (iii) not provided a response or direction to Datacom in the timeframe reasonably requested by Datacom or that is otherwise agreed between the parties.
37. Except as specified in a SOW and to the extent permitted by law, all implied warranties, conditions and guarantees are expressly excluded under these General Terms, including as to the quality, state or condition of any goods or Services or their appearance, quality, content or fitness for any particular purpose (including the UN Convention on Contracts for the International Sale of Goods 1980 and the Contracts and Commercial Law Act 2017).
38. We will pass to you to the extent permitted, all manufacturer's warranties in respect of the Products.
39. Datacom may, at its sole discretion and in full satisfaction of any liability it has to the you under these General Terms or a SOW, repair or replace any defective deliverable or Product, re-provide the Product or Services or credit the portion of the charges applicable to the Product or Services in respect of any claims accepted.
40. Each party will take reasonable steps to mitigate any Loss for which that party is entitled to bring a claim against the other.
41. You are responsible for ensuring compliance with all applicable laws in the relevant jurisdiction(s).

Term and Termination

42. These General Terms will continue to apply for as long as we provide Products and Services to you. Each SOW or other written agreement between the parties will start on the date specified in it unless terminated in accordance with these General Terms.
43. Either party may terminate these General Terms or a SOW (but not an order once accepted):
 - (a) on giving the other party 90 days' prior written notice;
 - (b) if the other party is in material default of these General Terms or any SOW, the default capable of remedy and, within 60 days of receiving written notice of the default, the other party has not remedied or tabled a reasonably acceptable plan to remedy the default;
 - (c) immediately on written notice if the other party is in material default of these General Terms or a SOW and the breach is not capable of remedy; or

- (d) immediately on written notice if the other party experiences, or looks likely in the reasonable opinion of the party to experience, an insolvency event (threatened or actual).

General

44. If either of us does not exercise a right at any time in connection with a default under these General Terms or a SOW, this does not mean that the right is waived or cannot be exercised later.
45. Where any provision of these General Terms is declared invalid, unenforceable, or illegal, then that provision may be severed, and will not affect the enforceability or effectiveness of any other provision in these General Terms.
46. These General Terms may be varied by us from time to time by notifying you in writing. Any variation only applies to any future services under those amended terms. In the event that any of these General Terms conflict with the terms of any other written agreement under which we provide services to you, the terms of that other written agreement will prevail.
47. We will not be liable to you for any delay or failure to perform our obligations under these General Terms or a SOW where the delay or failure is caused by an event beyond our reasonable control.
48. For the purposes of providing Products and Services, you will ensure we may:
 - (a) collect all relevant information (including any personal information) we may reasonably require from you, your personnel, customers or any third parties, and you authorise and request those individuals to release that information to us (including for the purpose of checking creditworthiness of you); and
 - (b) hold and process that information for the purpose of performing our obligations in respect of any contract in accordance with applicable privacy and data protection laws, including potentially holding and transmitting that information offshore to one of our Related Companies or wider group members.
49. We will ensure that the information provided under clause 48 will be collected, held and used securely (to the same standards as we use for our own confidential and personal data), and only for the purpose for which it was collected, in accordance with the Datacom Group Privacy Policy (which is available at our website www.datacom.co.nz or www.datacom.com.au).
50. You confirm that you are acquiring all Products and Services for the purposes of a business as defined in the Consumer Guarantees Act 1993 (the Act). The provisions of the Act do not apply to the Products and Services we supply to you under these General Terms.
51. Neither party will make or authorise any public announcement or public disclosure regarding the business relationship between the parties or a SOW without the prior written consent of the other party.
52. A party may subcontract the performance of all or any of its obligations under these General Terms or a SOW only if it has the prior written consent of the other party (consent not to be unreasonably withheld or delayed), provided that Datacom may subcontract to its Related Companies without your prior written consent.
53. These General Terms and any SOW constitute the entire agreement between the parties relating to the provision of Products and Services by us to you, which supersedes and cancels any previous agreement, understanding or arrangement whether written or oral with you. You confirm that you are not relying on any representation made by Datacom except as expressly set out in these General Terms or a SOW.
54. These terms will be governed and construed in accordance with the laws of New Zealand. We both submit to the non-exclusive jurisdiction of the New Zealand courts.