

DATA DESIGN SERVICES LIMITED - TRADING TERMS AND CONDITIONS

- 1. General:** THESE terms and conditions apply to all contracts, entered into between Data Design Services Limited (hereinafter called "the Company") for the supply of goods, software and services to the "Customer" and these conditions supersede ALL others of whatever nature, unless expressly agreed otherwise in writing. Customers shall be deemed to have read, understood, and agreed to these conditions before entering into an agreement with the Company; and if any individual condition is subsequently held invalid, then the other conditions herein shall still remain in force providing that the principal obligations of the parties are maintained.
- 2. Prices:** UNLESS otherwise expressly stated to be firm for a period the Company's prices are subject to variation to take account of (but not limited to) variations in wages, materials, or other costs since quotation date, or date of order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted, and the invoice so adjusted shall be payable as if it were the original contract. All prices are exclusive of Value Added Tax, and this will be charged at the appropriate rate.
- 3. Intellectual Property Rights:** NO warranty is given against infringements arising out of use of the goods or software or otherwise and the Customer shall indemnify the Company against all costs, claims and damages incurred as a result of any alleged infringement of any intellectual property rights including patents, copyright and design rights so arising.
- 4. Software:** (a) THE Company grants the Customer the non-exclusive right to use software produced by the Company (i.e.: for which the Company and its licensors are the copyright owners as ordered by Customer hereinafter called the "Program(s)") at a single site address specified on the order confirmation; or in the absence of this the normal trading address of the Customer; or any such place agreed in writing. (b) The Customer shall have the right to use the Program(s) only for his/her/their/its internal use, on the maximum number of computer terminals, PC's, or workstations specified in the quotation, or on the order confirmation. The Company without notice may terminate such rights if (i) the Customer fails to promptly pay all sums due under the agreement and all sums due under any related agreement in respect to Software Support Charges (ii) is in breach of any other of these Terms and Conditions. (c) The Customer acknowledges that all property and copyright in the Program(s) is and shall remain vested in the Company and that all property and copyright in any future enhancement or revision of any part of the Program(s) shall also belong to the Company. The Customer has no right to assign or transfer any rights granted in part or in whole to any third party under any circumstances. (d) The Customer undertakes to maintain the strict confidentiality of the Program(s) including related literature, manuals, or other documentation issued by the Company and not to divulge or release possession of them or any part thereof to any third party, or use them or any part thereof or permit them or any part thereof to be used in such a way that any similar Program(s) is developed there-from in part or in whole on any computer equipment. (e) The Customer shall at all times remain liable for any breach of provision of clause (b) and (d). (f) Any modifications to software made on behalf of the Customer shall be to the Customers account and the Customer may request the Company to give a firm quotation for any modification prior to ordering the modification. Otherwise Customer shall pay such price as may be reasonable. All modification made to the software shall carry a 30 day warranty against defects effective from date of supply by the Company. (g) Program(s) shall carry a 30 day warranty against defects, during which time the Company shall free-of-charge rectify any Program defects (as defined in the specification produced by the Company), notified in writing as soon as is reasonably possible. (h) Software training sessions shall be provided at the Customer's request, and charged at a predetermined rate applicable at the time. Training will normally run between 09:30 - 16:30 Monday to Friday, excluding statutory holidays; however the Company do not accept any liability for losses incurred by the Customer in the Company failing to meet specific training dates, or times.
- 5. Payment Terms:** (a) FOR goods, software and services payment shall be due by 30th day following date of invoice, unless expressly agreed otherwise in writing signed by a Director of the Company. The Company reserves the right to withhold technical support, installation, or training services for non-payment of overdue amounts. (b) Without prejudice to any other rights it may have; and having taken reasonable measures to recover overdue sums; the Company is entitled to charge interest at 2% above the Current Base Rate of National Westminster Bank PLC, on overdue payments; along with any legal costs, court fees, or debt recovery costs incurred by the Company. (c) The payment terms in clause 5(a) may be superseded by those shown on the quotation, only if a Director of the Company signs the quotation. In the event of a query arising concerning the exact terms of payment, the terms shown on the quotation shall prevail; in the absence of a formal quotation the terms as shown in this clause 5 herein shall apply. (d) Additionally after failure to pay overdue sums, the Company shall be entitled without notice to remove from the Customer's location all software having invoices that remain outstanding including all relating documentation and user manuals. If the Customer shall thereafter within 30 days require use of such software, and only when all outstanding payments have been received the Company will at its sole discretion reinstall the software and any relating documentation subject to prior receipt of a predetermined reinstatement fee.
- 6. Passing of Title and Risk:** FROM the time of delivery the goods and software shall be the risk of the Customer, who shall be solely responsible for their custody and maintenance, unless otherwise expressly agreed in writing. The goods shall remain the property of the Company until all payments under the contract have been made in full, and unconditionally. Pending payment of the full purchase price of the goods the Customer shall at all times keep the goods comprehensively insured against loss, damage, or accident, fire, theft, and other risks usually covered by insurance in the type of business of which the goods are to be used; for an amount at least equal to the Full retail value of the goods. The policy shall bear an endorsement recording the Company's interest.
- 7. Conditions and Warranties:** EXCEPT as expressly set out herein any conditions or warranties (whether expressed or implied by statute, common law, or arising from conduct or a previous course of dealing or trade, custom or usage) as to the quality of the goods or their fitness for any particular purpose (even if that purpose is made known expressly or by implication to the Company) or as to the correspondence of the goods, software and services with any description or sample are hereby expressly negated.
- 8. LIABILITY; EXCEPT IN RESPECT OF CLAIMS FOR DEATH OR PERSONAL INJURY, THE COMPANY SHALL NOT BE LIABLE IN ANY EVENT HOWEVER ARISING WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY COSTS, DAMAGES OR EXPENSE INCLUDING DIRECT, INDIRECT AND CONSEQUENTIAL DAMAGES. WITHOUT LIMITATION LOSS OF PROFITS AND REVENUE ARE INCLUDED UNDER THE HEADING OF CONSEQUENTIAL DAMAGES.**
- 9. Default or Insolvency of Customer:** IF the Customer shall be in breach of any obligations under the contract of any distress or execution shall be levied on the Customer's property or assets or if the Customer shall take or offer to make any arrangement or composition with his creditors or commit any kind of bankruptcy or if any bankruptcy petition be presented against him (if the Customer is a company) if any Resolution or Petition to wind up such company shall be passed or presented or if a Receiver of the whole or any part of such company's undertaking property or assets shall be appointed, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Customer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of goods, software and services until any defaults by the Customer are remedied.
- 10. Delivery:** THE Company shall use its reasonable endeavours to provide the goods; software and services by any date stipulated in the contract but time shall not be of the essence.
- 11. Force Majeure:** THE Company shall be entitled to delay or cancel delivery of goods, software and services or to reduce the amount delivered if it is prevented from or hindered by manufacturing obtaining or delivering the goods by normal route or means of delivery through any circumstances beyond its reasonable control including (but not limited to) strikes, lockouts, accidents, war, fire reduction in or unavailability of power at manufacturing plant, breakdown in plant or machinery, or shortage of unavailability of raw materials from normal source of supply.
- 12. Cancellation:** SAVE as provided in the conditions herein the contract may not be cancelled except by agreement in writing of both parties and upon the payment to the Company of such amount as may be necessary to indemnify the Company against all loss resulting from the said cancellation, or as detailed in the quotation.
- 13. Subcontracting:** THE Company may assign the contract with the Customer in part or in whole to any person, firm, or company they see fit without notice; and shall not be held liable for under-performance of contractors; and resulting loss or damage incurred by the Customer howsoever caused.
- 14. Proper Law:** THE contract shall in all respects be governed by English Law and shall be deemed to have been made in England and the Customer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.