

DatacomIT General Terms – Products and Services

Application

These “**General Terms**” are the terms and conditions on which we provide (or will provide) Products and/or Services to you unless we both expressly agreed other terms apply.

Parties

“**DatacomIT**”, “**we**”, “**us**”, “**our**” means Datacom Information Systems Pty Limited or, if specified otherwise in a statement of work or services schedule, a related company of DatacomIT.

“**You**” or “**your**” means you as the customer in the agreement between you and us that is formed as described below.

Agreement

The Agreement between you and us can be formed in the following ways:

- if you accept a quote, services schedule, statement of work, or other document from us that includes these General Terms (or a link to them); or
- we both otherwise agree these General Terms apply to any provision of Products and/or Services to you.

Supply of Products and Services

1. We will supply the Products and/or Services to you as agreed between us both in an Agreement. We must both agree any amendment to the Agreement in writing.
2. We will use reasonable efforts to meet the timings agreed for completion of the Services. You agree that our ability to do this depends on you promptly: giving us information; participating in reviewing material we have produced; and giving us the inputs we need.
3. We will comply with your reasonable and pre-agreed on-site policies and procedures where applicable to the Services. We may increase our charges where any policy and/or procedure causes us to incur additional costs.
4. We will use reasonable efforts to deliver each Product, Service or Solution within the agreed timeframes and at the location (if specified) in the relevant Agreement. If you have bought a Product through our website or portal, we will deliver the Product to the nominated shipping address. You must take possession of the Product at the time we deliver the Product to you. You agree that we may deliver the Products by instalment.

Responsibility and title

5. Responsibility for each Product we supply to you will pass to you on delivery, but title (for physical equipment or hardware) or the right to use or licences (for software, platforms or subscription services) will not pass to you until you have fully paid us for the Products.
6. Until title to the relevant physical equipment or hardware Products passes from us to you for any Products we deliver you, you are deemed to be acting as our bailee for the Products.
7. Once we confirm an order, return of any Products and any refund or credit is at our reasonable discretion, unless there is a fault or delivery error.
8. All third-party Products we supply to you will be provided on the terms of the third-party manufacturer or licensor, including warranties, performance commitments, end-user terms and conditions, IP Rights (including any indemnities) and liability for the Product. We are a simple reseller and distributor of those third-party Products.

Services output

9. We will perform the Services with due care and skill. Our proposed assigned personnel have the necessary expertise and experience to properly perform the Services.
10. If you are not a consumer under applicable law, you are solely responsible for ensuring that the Services and any deliverables meet your needs and requirements.
11. Subject to clauses 14 and 15, and excluding any third-party IP Rights, you own all IP Rights in the materials we provide in delivering the Services. This clause assigns all those rights to you.
12. We or our suppliers own all pre-existing IP Rights in materials used in performing the Services or creating the deliverables, or any materials created which are not specifically deliverables for you only. Subject to you performing your obligations under these General Terms, we grant you a non-exclusive licence to use any of these IP Rights if incorporated in any deliverable, but only to the extent necessary to use that deliverable.
13. Nothing in these General Terms stops us from using our skills, ideas, techniques, experience, know-how and methodologies in future for our own benefit or for others.
14. We 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 IP Rights of any third-party provided you promptly notify us of any claim and

reasonably assist us. We may at our option, handle that claim's defence, and you must not do anything to prejudice the settlement or defence of any claim. You must take all reasonable steps to mitigate your loss. We will not indemnify you where the applicable third party's claim arises from your use or modification of the IP Rights or your breach of this Agreement.

15. You agree to promptly review any Services or deliverables provided, and where they do not materially meet the requirements specified in the statement of work or services schedule or otherwise agreed in writing between us, we may at our option either for any part of the Services or deliverables:

- (a) replace or re-perform that part at no additional cost to you; or
- (b) refund to you an appropriate portion of the charges paid for that part.

This does not impact any other right you may have at law.

16. You authorise us to act on your behalf to license to you any applicable third-party IP Rights set out in the relevant Agreement. You agree to use any third-party IP Rights included in a deliverable, subject to any applicable terms and conditions notified to you.

17. We may use artificial intelligence platforms, products, systems and services ("AI Tools") from time to time in the delivery of the Services or internally within our organisation. We will ensure that we only use AI Tools from reputable suppliers and that any confidential information belonging to you is not reused or kept for further training of the AI Tool or otherwise made available outside of the AI Tool instance licensed to us. You acknowledge that AI Tools and the processing of information (including your confidential information) may occur in other countries.

Charges and payment

18. You will pay us the charges for the Products and Services set out on the invoice or other similar document we issue.

19. The charges payable will include any extra amount required for any GST and any other similar taxes, duties, and levies payable for the supply of the Products and Services as at the invoice date.

20. You agree that from time to time we may receive (and keep) commissions, volume rebates, discounts or other payments from our suppliers and partners which relate to aggregate sales across all of our customers and not just the Products and Services we supply to you.

21. We may alter our standard rates or prices making up the charges without notice from time to time for future orders. You do not have to purchase further Products or Services from us at these altered charges. Otherwise, if additional costs arise (for

example, exchange rate fluctuations or an increase in a supplier price), after the date of an order or quote, our charge to you for any subsequent order or quote will alter accordingly. Any rates set out in an Agreement which we have agreed are fixed for the term or for a period, will remain so.

22. You will make all payments due to us in full without set off or deductions, other than genuinely disputed charges. Payment must be made as set out in any Agreement or if not, within 30 days following the invoice date.

23. Where you genuinely dispute a charge, you must notify us promptly and we will both discuss the issue to try and resolve it. You must pay any non-disputed portion of the charges when due.

24. Where you have not paid us when due, we may charge you interest on the outstanding charges due (at a rate equivalent to our applicable bank overdraft rate plus 3%) and stop providing you with the Products and Services until you have fully paid us. We will treat your non-payment as termination of the Agreement by you. We reserve the right to claim any Loss we have suffered due to your termination.

Confidential information

25. We both 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.

26. 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.

27. Non-disclosure of confidential information will not apply to the extent the disclosure is required by law or as part of listing requirements, or where the confidential information was lawfully publicly available, independently created or obtained from a third party (without breach of an obligation of confidence).

28. Each of us will inform the other as soon as possible if they:

(a) become aware or suspect there has been any unauthorised disclosure of the other party's confidential information; or

(b) are required by law to disclose the confidential information.

29. At the end of any Agreement or if requested earlier, you and we will destroy the other's confidential information, and all copies of it (other than that information held in automated logs or required to be retained for audit or regulatory purposes).

30. Where any information is personal information obtained under or in connection with these General Terms, we must both comply with all applicable privacy or data protection laws.

31. We will use all reasonable efforts to ensure the information you provide will be collected, held and used securely (to the same standards we use for our own confidential and personal data), and only for the purpose for which it was collected,

Limitation of liability

32. Except for any liability that cannot lawfully be excluded, either of us is liable under or in connection with any Agreement only to the extent the party has breached that Agreement.

33. Subject to the clauses that follow in this section, and to the extent the law allows, the maximum aggregate liability of each of us relating to or in connection with an Agreement is:

(a) for liability relating to breach of privacy or confidentiality obligations under that Agreement, two times the charges paid or payable for the relevant Services and/or Products during the 12 months immediately before the liability arose; or

(b) for all other liability, the charges paid or payable for the relevant Services and/or Products during the 12 months immediately before the liability arose;

but, in both cases, less any amount paid or payable under that Agreement for third party IP Rights or Products (not including any deliverables) we provided.

34. To the extent the law allows, neither of us is liable to the other for any indirect or consequential Loss, any Loss of profit, business, revenue, anticipated savings, goodwill or opportunity, and the Loss of any third-party which is not a Related Company, even if that party has been advised of the possibility of such Loss.

35. The maximum liability in section 35 will not apply if the liability is due to a breach of the indemnity obligations under the “Services output” section above, fraud, or your failure to pay any amount due and owing under an Agreement.

36. Unless you are a “Consumer” as defined by applicable law, all implied warranties, conditions and guarantees are expressly excluded, including as to the quality, state or condition of any Services or Products or their appearance, quality, content or fitness for any particular purpose (including the United Nations Convention on Contracts for the International Sale of Goods 1980 and the Contracts and Commercial Law Act 2017).

37. This section 39 only applies where you are a Consumer. Where there is any non-major failure or defect in any Product or Service, we will choose to repair, resupply or replace them, or pay for the repair, resupply or replacement, or instead give you a credit

or refund. We will do this in a reasonable time, or you may cancel and get a refund for any unused portion. Where there is any major failure or defect in any Product or Service, then you can choose to cancel the Products and Services and get a refund for any unused portion or have us resupply or replace them. All your other rights at law remain, including for reasonably foreseeable loss or damage where there is any failure in any Product or Service, despite any other section in these General Terms.

38. To the extent the law and the relevant third-party terms allow, we will pass through to you or hold for your benefit all manufacturer's warranties for any third party manufactured Products.

39. Each of us will take reasonable steps to mitigate any Loss for which that party is entitled to bring a claim against the other.

40. Neither of us is liable to the other for any delay or failure to perform their obligations under an Agreement where the delay or failure is caused by a Force Majeure Event. This does not apply to your obligation to pay charges under an Agreement.

Term and termination

41. Each Agreement between us starts on the date specified or otherwise when the Agreement is formed and continues until terminated under that Agreement.

42. Either of us may terminate an Agreement:

(a) if the other party is in material breach of an Agreement, the breach is capable of remedy and, within 30 days of receiving written notice of the breach, the other party has not remedied the breach;

(b) immediately on written notice if the other party is in material breach of these General Terms and the breach cannot be remedied; or

(c) immediately by giving written notice if the other party experiences, or looks likely in the reasonably opinion of the party to experience, an Insolvency Event.

For Products, unless the above applies, any order from you cannot be otherwise cancelled or terminated.

43. In addition, for Agreements for ongoing Services, either of us may terminate on giving the other party 90 days' prior written notice. If you terminate under this section 43, or we terminate under section 42, you must promptly pay us:

(a) any fixed or sunk costs (including committed third party costs, set-up costs and redundancy costs or any deferred transition-in costs or upfront investments we made) that we will or have incurred in respect of the Services; and

(b) all money owing to us under the relevant Agreement, including charges for Services provided and expenses incurred, but which have not been invoiced.

Insurance

44. We will take out and maintain insurance with a reputable provider as would be prudent for persons engaged in business similar to ours.

45. We will provide reasonable evidence of our insurance cover at your reasonable request.

General

46. No delay or failure by either of us to exercise a right or remedy constitutes a waiver or variation of any such right or remedy.

47. If part or all of any provision of an Agreement is illegal or unenforceable, then that provision will be interpreted as needed to ensure it is not illegal or unenforceable. If that is not possible, the provision (or part of it) will be severed from the Agreement and the remaining provisions continue in full force and effect.

48. We may vary these General Terms from time to time on our website. Any variation only applies to any future Services or Products under new Agreements incorporating those amended terms. If you do not agree to any varied terms, you may immediately terminate any Agreement which incorporates those amended terms and pay us for any Services or Products provided in whole or part to you.

49. The terms of any other written agreement under which we provide services to you prevail to the extent of any inconsistency with these General Terms.

50. The law of the State of Victoria, Australia, governs these General Terms, all Agreements, and all transactions between you and us arising out of the supply of Products or Services by us to you. We both submit to the non-exclusive jurisdiction of Victorian courts.

Definitions

In these General Terms, the following terms have the following meaning (unless the context requires something different):

“Agreement” means the agreement between you and us that is formed in one of the ways described in these General Terms.

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

“Consumer” is defined in section 36.

“Force Majeure Event” means in relation to one of us:

- (a) an act of God;
- (b) an act of public enemy or declared or undeclared war or threat of war;
- (c) a terrorist act, sabotage, blockade, revolution, riot, insurrection, civil commotion, strike (other than a strike of that party’s workers) or public demonstration (other than one caused by that party);
- (d) earthquake, fire, explosion, flood, storm or other adverse event;
- (e) unpredictable or unpreventable delays in delivery of materials, equipment or services necessary for the compliance by that party with any obligations under this Agreement;
- (f) governmental action, restraint, direction or embargo;
- (g) epidemic or pandemic disease, quarantine, movement restrictions or other government or state intervention;
- (h) any fault, failure or interruption in any utility, or the telecommunications network supplying telecommunications services;
- (i) any cyber operation or event where reasonable grounds exist to attribute the operation or event to a state, state actors or individuals sponsored or tacitly encouraged by any state, against either us or you (this includes a disruption, denial, unauthorised access, theft, vandalism or other damage, locking up or encryption, of any data or systems); or
- (j) any other event or circumstance beyond the reasonable control of that party.

“Good Practice” means the exercise of skill and care, which would reasonably be expected from a skilled and experienced supplier who provides services similar to the Services in similar circumstances in Australia.

“Insolvency Event” means any of the following events (whether actual or threatened) in any jurisdiction:

- (a) a party’s insolvency, winding up, dissolution, entry into an arrangement with creditors or reorganisation (except for purposes of amalgamation, or solvent reconstruction on terms previously approved by the other party);
- (b) a receiver, liquidator or administrator is appointed over the assets of a party;
- (c) a party suspends payment of its debts or is unable to pay its debts when they fall due;

(d) a creditor or encumbrancer of a party attaches or takes possession of (or other such process) the whole or any part of a party's assets; or

(e) any analogous event to the above.

"IP Rights" means all rights in respect of patents, copyrights, designs, circuit layouts, trademarks, trade secrets, know-how, and all other intellectual and industrial property rights throughout the world, including all moral rights.

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

"Products" means all hardware, related equipment, Software and all other goods or property which we supply (or will supply) to you, as described in an Agreement, and includes all deliverables provided under the Services.

"Related Company" means a "related body corporate" in the Corporations Act 2001 (Cth), read as if the expression includes any body corporate and any company incorporated under the law of any jurisdiction.

"Services" means all services which we supply (or will supply) to you, as described in an Agreement and includes any Products provided as part of a Service.

"Software" means all system software, application software, software tools and software utilities which we supply (or will supply) to you as described in an Agreement, and includes any software provided as part of a Product or Service.