

DataCol Terms and Conditions of Trade

1. Definitions

- 1.1. "DataCol" means DataCol NZ Limited its successors and assigns or any person with the authority of DataCol.
- 1.2. "Customer" means the Customer or any person acting with the authority of the Customer.
- 1.3. "Goods" means Goods supplied by DataCol and where the context so permits includes any supply of any Services.
- 1.4. "Price" means the cost of the Goods as agreed between DataCol and the Customer subject to clause 4 of these terms and conditions.
- 1.5. "Services" means all services supplied by DataCol and includes any advice or recommendations and, where the context so permits will include any supply of Goods.

2. Acceptance

- 2.1. Any instructions received by DataCol from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by DataCol shall constitute acceptance of the terms and conditions contained herein.
- 2.2. Where more than one Customer has entered into these terms and conditions, the Customer's shall be jointly and severally liable for all payments of the Price.
- 2.3. None of DataCol's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of DataCol in writing nor is DataCol bound by any such unauthorised statements.
- 2.4. The Customer shall be solely responsible for the accuracy of any information supplied to DataCol.
- 2.5. Any request for a variation by the Customer to the Goods or Services including but not limited to any change to the quantity, character, method, sequence, location or quality must be made in writing. If DataCol agrees to undertake the variation then the Customer will either pay the amount of the variation if it creates an increased cost or receive a credit for it if it results in a reduction in cost with the next payment due to DataCol. DataCol may, at its sole discretion, charge its reasonable administrative costs of and incidental to any variations whether the variation proceeds or not. DataCol will be entitled to an extension of time to any agreed date for completion as a result of the net effect of any variation. DataCol will not be liable for any defect in any materials or workmanship whether by negligence or otherwise which relates to variations that are entered into by the Customer with any of DataCol's sub-contractors, agents or employees other than through the procedures set out herein.
- 2.6. The Customer undertakes to give DataCol not less than fourteen (14) days written notice of any proposed change in the Customer's details including but not limited to, changes in the Customer's ownership, address, facsimile number, or business practice.

3. Access

- 3.1. The Customer acknowledges that the supply of Services requires the Customer's co-operation and in particular the Customer agrees to:
 - (a) arrange for Seller to have access to the Customer's site as and when required and do all things necessary to ensure access to the Customer's site is safe and unobstructed;
 - (b) provide DataCol with all necessary services and amenities required for the supply of the Services and provide safe and secure on-site storage for materials and equipment; and
 - (c) make sure the premises comply with all applicable laws, including without limitation, those relevant to the health and safety of DataCol's staff and contractors and provide any site specific training and advise of any site specific safety plan(s) and DataCol agrees to comply with all reasonable directions about what to do and not to do on the Customer's site.

4. Price and Payment

- 4.1. The Price of the Goods and or Services will be;
 - (a) as on invoices provided by DataCol to the Customer or as on the specific contract or tender provided by DataCol; or
 - (c) DataCol's quoted Price which will be binding upon DataCol provided that the Customer will accept in writing DataCol's quotation within thirty (30) days.
- 4.2. A deposit may be required. The amount will be stipulated at the time of the order and will become immediately due and payable.
- 4.3. Time for payment will be of the essence and will be stated on the invoice, quotation or any other order form. If no time is stated then payment shall be on delivery.
- 4.4. At DataCol's sole discretion, payment for approved Customer's will be due twenty (20) days following the end of the month in which a statement is posted to the Customer's last known address.
- 4.5. Payment will be made by cheque or by direct credit, or by any other method as agreed to between the Customer and DataCol.
- 4.6. The Price will be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by DataCol.

5. Delivery of Goods

- 5.1. Delivery of the Goods shall be made to the Customer's address. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Customer at DataCol's address.
- 5.2. The costs of carriage and any insurance which the Customer reasonably directs DataCol to incur will be reimbursed by the Customer (without any set-off or other withholding) and will be due on the date for payment of the Price. The carrier shall be deemed to be the Customer's agent.
- 5.3. DataCol may deliver the Goods by separate instalments (in accordance with an agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer.
- 5.5. The failure of DataCol to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6. DataCol will not be liable for any loss or damage whatsoever due to failure by DataCol to deliver the Goods (or any of them) promptly.

6. Risk

- 6.1. Each Good is at the Customer's risk once within the Customer's possession or control.
 - 6.2. Title in any Goods will remain with DataCol until all money owing by the Customer to DataCol (including any interest or other charges) has been paid in full. The Byer will keep such Goods clearly identifiable as the property of DataCol until such time as they may be mixed with other Goods in the ordinary course of business. This provision is inserted solely for the benefit of DataCol and does not entitle the Customer to return or require the return of any Goods which have not been paid for.
 - 6.3. Until title in the goods passes the Customer must keep the Goods free of security interests (as defined in the Personal Property Securities Act ("PPSA")) other than in favour of DataCol.
 - 6.4. The Customer acknowledges that this clause creates a security interest as defined in the PPSA in the Goods. The Customer must promptly sign all documents, give DataCol any information and do anything else we reasonably ask you to in connection with this. The Customer waives your right to receive a verification statement (as defined in the PPSA).
 - 6.5. The Customer agrees to give any further securities as DataCol may require from time to time, including if asked to sign a general security agreement. Any such further securities must be in the form that DataCol requires.
 - 6.6. Where any Goods become annexed to the land comprising the premises so that they lose their status as "personal property" under the PPSA, the Customer agrees that, as between the Customer and DataCol, it is intended that they continue to be chattels and that DataCol may sever those chattels from the land and remove them. The Customer grants DataCol the right to enter any place where those goods are located for this purpose.
 - 6.7. As security for all of the Customers obligations to DataCol under these terms and conditions, the Customer grants a security interest to DataCol in all of the Customer's right, title and interest in all of the Customer's present and after acquired property. The Customer agrees that any of the Customer's present and after acquired property that comes into existence after the date of these terms and conditions comes into existence subject to the security interest in these terms without the need for any further action by any party. The Customer acknowledges that the Customer has received valuable consideration from DataCol, agree that it is sufficient, and attachment is immediate and is not postponed.
 - 6.8. If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, DataCol is entitled, without prejudice to any of its other rights or remedies under these terms and conditions (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these terms and conditions. The production of these terms and conditions by DataCol is sufficient evidence of DataCol's rights to receive the insurance proceeds without the need for any person dealing with DataCol to make further enquiries.
- ## 7. Defects / Returns
- 7.1. The Customer shall inspect the Goods on delivery and shall within fourteen (14) days of delivery notify DataCol of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford DataCol an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the parties' agreement and free from any defect or damage.

7.2. For Goods, which DataCol has agreed in writing that the Customer is entitled to reject, DataCol's liability is limited to either (at DataCol's discretion) replacing the Goods or repairing the Goods provided that:

- (a) the Customer has complied with the provisions of clause 9.1; and
- (b) the Goods are returned via DataCol's specified carrier at the Customer's cost within fourteen (14) days of the delivery date; provided that DataCol will not be liable for Goods which have not been stored or used in a proper manner and the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonable possible in the circumstances.

7.3. DataCol may (in its discretion) accept the Goods for credit but this may incur a handling fee of 15% of the value of the returned Goods plus any freight.

8. Warranty

8.1. DataCol has no responsibility or liability for the failure of the Customer to meet its obligations hereunder or to ensure that the Goods are used in accordance with any instructions issued. To the extent allowed by law and subject to 8.4 to 8.6, every warranty or condition or guarantee implied by custom or law is hereby excluded.

8.2. To the extent allowed by law, DataCol has no liability (whether statutory, in contract or tort (including negligence), or howsoever) to the Customer or any of its agents or employees for any indirect damage or economic loss of any kind or any other loss or costs other than direct physical losses (including legal and lawyer/client costs) caused or contributed to by DataCol or any of its agents or employees in respect of any Goods or Services.

8.3. If, notwithstanding the provisions of clauses 8.1 and 8.2, DataCol is found to have any liability it is agreed that any liability will not exceed the Price.

8.4. Subject to clauses 8.1 to 8.3 and 8.5 and 8.6 DataCol warrants that if any defect in any workmanship of DataCol becomes apparent and is reported to DataCol within twelve (12) months of the date of delivery (time being of the essence) then DataCol will either (at DataCol's sole discretion) repair the defect or replace the workmanship.

8.5. The conditions applicable to the warranty given by Clause 8.4 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer to properly maintain any Goods or failure on the part of the Customer to follow any instructions or guidelines provided by DataCol; or
 - (ii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iii) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
- (b) The warranty shall cease and DataCol shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without DataCol's consent.
- (c) In respect of all claims DataCol shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship and or Goods.

8.6. For Goods not manufactured by DataCol, the warranty shall be the current warranty provided by the manufacturer of the Goods. DataCol shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturer's warranty.

8.7. Where the Customer is a "Consumer" and acquires any Goods or Services, or holds itself out as acquiring goods or services, for the purposes of a "Business" (as those terms are defined in the Consumer Guarantees Act ("CGA")) then to the extent permissible DataCol and the Customer agree the CGA is hereby excluded. Otherwise, where the Customer is a Consumer this contract is to be read subject to the terms of the CGA.

9. Default and Consequences of Default

9.1. Interest on overdue invoices will accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month until actual payment is made.

9.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify DataCol from and against all DataCol's costs and disbursements including on a solicitor and own client basis and in addition all of DataCol's nominees costs of collection.

9.3. Without prejudice to any other remedies DataCol may have, if at any time the Customer is in breach of any obligation (including those relating to payment), DataCol may suspend or terminate the supply of Goods and or Services to the Customer and any of its other obligations under these terms and conditions. DataCol will not be liable to the Customer for any loss or damage the Customer suffers because DataCol exercised its rights under this clause.

9.4. If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00

or 10% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

9.5. In the event that:

- (a) any money payable to DataCol becomes overdue, or in DataCol's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer then without prejudice to DataCol's other remedies at law:
 - (i) DataCol shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to DataCol shall, whether or not due for payment, immediately become payable.

10. Customer Indemnity/Warranty:

10.1. The Customer will indemnify DataCol for any physical, direct and indirect damage, economic loss or other loss or costs or expenses (including actual legal and lawyer/client costs and expenses) and will fully indemnify DataCol against any claim or proceedings against DataCol, to the extent caused or contributed to by the Customer (or any of its agents or employees) or arising from an Event of. The Customer also warrants that the information provided in support of any application for credit is reliable and accurate.

11. Intellectual Property

11.1. Where DataCol has designed Goods for the Customer, then the copyright in those designs shall remain vested in DataCol, and shall only be used by the Customer at DataCol's discretion.

11.2. Where any designs or specifications have been supplied by the Customer then the Customer warrants that the use of those designs or specifications does not or will not infringe the rights of any third party.

11.3. The Customer warrants that all designs or instructions to DataCol will not cause DataCol to infringe any patent, registered design or trademark in the execution of the Customer's order.

12. Privacy Act 1993

12.1. The Customer authorises DataCol to:

- (a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
- (b) to disclose information about the Customer, whether collected by DataCol from the Customer directly or obtained by DataCol from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.

12.2. Where the Customer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Privacy Act 1993.

13. Contractual Remedies Act 1979

13.1. The provisions of the Contractual Remedies Act 1979 shall apply to this contract as if section 15(d) were omitted from the Act.

14. General

14.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

14.2. These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.

14.3. The Customer may not directly or indirectly assign to any person any of its benefits or burdens in respect of any agreement with DataCol but DataCol may.

14.4. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by DataCol.

14.5. DataCol may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

14.6. DataCol reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which DataCol notifies the Customer of such change.

14.7. DataCol is not liable for any failure or delay in performing an obligation or for carrying out any responsibilities under any agreement with the Customer where an event has occurred which is beyond its reasonable control and which prevents it from performing its obligations or carrying out those responsibilities.

14.8. DataCol and the Customer agree that these terms express the entire understanding between them and the remedies herein provided shall be the available remedies in place of the Contractual Remedies Act and that there have been no representations made by or on behalf of Right House that are relied upon by the Customer.