

## DATA SELECT LIMITED - PURCHASE TERMS AND CONDITIONS

### 1 Definitions and interpretation

#### 1.1 Definitions

In the Agreement:

**Data Select** means Data Select Limited registered in England and Wales with registered number 03662640 and registered office at Network House Third Avenue, Globe Park, Marlow, Buckinghamshire, United Kingdom, SL7 1EY;

**Delivery Address, Delivery Date(s), Price and Supplier** have the meanings set out in the Purchase Order;

**Acceptance Conditions** has the meaning given in clause 17;

**Agreement** the agreement made up of the following:

(a) the Purchase Order;

(b) these Purchase Terms;

(c) Data Select's mandatory policies (as notified to the Supplier by Data Select from time to time); and

(d) any Schedules (if any) attached to the Purchase Order.

If there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list;

**Intellectual Property Rights** shall include copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation the Specification), know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Product** means the products to be purchased by Data Select as set out in the Purchase Order;

**Purchase Order** means Data Select's purchase order incorporating these Purchase Terms by reference;

**Purchase Terms** means these purchase terms and conditions;

**Specification** means the specification of the Products as stipulated by Data Select to the Supplier or otherwise agreed in writing by the parties;

**Standards** Data Select's manufacturing, technical and performance standards and specifications relating to the Products and its requirements of Suppliers, including all requirements detailed in Data Select's "Supplier Manual" (if any), as notified to the Supplier from time to time and including but not limited to all applicable laws, statutes, regulations and codes from time to time in force (whether or not communicated by Data Select to the Supplier); and.

**Supplier** means the supplier noted on the Purchase Order.

**Supplier's Provisions** has the meaning given in clause 3.1.

#### 1.2 Interpretation

In the Agreement unless the context otherwise requires:

1.2.1 words importing any gender include every gender;

1.2.2 words importing the singular number include the plural number and vice versa;

1.2.3 words importing persons include firms, companies and corporations and vice versa;

1.2.4 references to numbered clauses and Schedules are references to the relevant clause or schedule set out in/attached to these Purchase Terms/the Purchase Order;

1.2.5 reference in any Schedule to numbered paragraphs relate to the numbered paragraphs of that Schedule;

1.2.6 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.2.7 the headings to the clauses and Schedules do not affect the interpretation of the Agreement;

1.2.8 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.9 where the word **including** is used in the Agreement, it shall be understood as meaning **including without limitation**.

## 2 Order

- 2.1 Data Select orders, and the Supplier agrees to sell, the Products at the Price for delivery by the Delivery Date(s).
- 2.2 The quantity and description of the Products are set out in the Purchase Order.
- 2.3 Data Select's order number (as referenced on the Purchase Order) must be shown on all communications and notices concerning or resulting from the Agreement and in despatch notes received with the Products.

## 3 Conditions applicable

- 3.1 The provisions of the Agreement shall apply to the sale of the Products by the Supplier to Data Select. Any other provisions, including those of the Supplier, which the Supplier applies, or purports to apply, shall not be the terms and conditions concerning the sale of the Products by the Supplier to Data Select, however such provisions are introduced (including but not limited to provisions included on quotations, estimates, conformations of order, invoices and order acknowledgements, delivery notes or similar documents) (the **Supplier's Provisions**). For the avoidance of doubt, the Supplier acknowledges and agrees that Data Select shall not be bound by any of the Supplier's Provisions.
- 3.2 The order for the Products shall be deemed to be an offer by Data Select to purchase Products from the Supplier pursuant subject to the provisions of the Agreement.
- 3.3 Any act to fulfil the order for the Products by the Supplier shall be deemed conclusive evidence of the Supplier's acceptance of the terms of the Agreement.
- 3.4 Any variation to the provisions of the Agreement (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Data Select.

## 4 Quality of Products to be supplied

The Supplier warrants, represents, undertakes and guarantees that the Products supplied under the Agreement will:

- 4.1 be free from defects in design, materials or workmanship and of satisfactory quality;
- 4.2 comply with the Standards and that appropriate quality control systems are in place to promote compliance with the Standards. If, for any reason, the Products as manufactured fail to meet the Standards and/or fail to comply with the relevant Specification, then the Supplier shall indemnify Data Select in respect of all costs and liabilities (including legal and professional fees and expenses), to the extent that such costs and liabilities are associated with or flow from such failure(s) by the Supplier and take all necessary corrective steps to remedy the relevant issue(s);

- 4.3 comply with, and be the same, as the relevant sample(s) for that Product as may be supplied by the Supplier to Data Select;
- 4.4 conform with the Specification and all other specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier; and
- 4.5 not infringe the Intellectual Property Rights of any third party (save where the Products infringe third party Intellectual Property Rights as a result of being made in strict accordance with the Specification).

The Supplier acknowledges and agrees that the approval by Data Select of any samples provided by the Supplier will not relieve the Supplier of any of its obligations under this clause 4.

## 5 Price

Data Select shall pay the Price (as stated in the Purchase Order) for the Products. Such Price cannot be varied without the prior written authorisation of Data Select, signed by a director or other statutory officer of Data Select. The Price is deemed to be inclusive of all: (i) charges for packaging, packing, shipping, carriage, insurance and delivery; and (ii) taxes, duties and other levies of any kind other than VAT in relation to the delivery of Products to the Delivery Address.

## 6 Payment

- 6.1 Payment for the Products shall be in accordance with the terms set out in the Purchase Order and in the absence of any such terms made the within 60 days of the Supplier's invoice. Save to the extent stated otherwise in the Purchase Order, the Supplier shall not issue an invoice until the Products have been delivered.
- 6.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from Data Select.
- 6.3 If a payment is not made by Data Select by the due date, then Data Select shall pay the Supplier interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment.

## 7 Packaging and labels

- 7.1 The Supplier shall comply with the requirements for packaging as may be stipulated by: all applicable laws in relation to the same; and (ii) Data Select in the Specifications and, in the absence of specific requirements, packed to ensure that the Products reach Data Select in a pristine state free from damage. If the Products have not been packed and/or handled in accordance with these packaging requirements, then the Products are not in accordance with the provisions of the Agreement.

7.2 Packaging material shall be used by the Supplier and supplied without charge to Data Select. It shall not be returned to the Supplier (unless the parties agree otherwise in writing prior to the applicable Delivery Date(s)).

## 8 Cancellation

Data Select shall have the right to cancel the order for the Products (or any part of the Products) which have not yet been delivered to Data Select. The cancellation shall be made in writing. Without prejudice to the generality of the foregoing, Data Select shall pay the Price (or where applicable, that part of the Price) for Products which have been delivered to Data Select or at the date of the notice of cancellation are ready for delivery to Data Select in accordance with the terms of the Agreement.

## 9 Delivery

9.1 The Products shall be delivered (carriage paid) to the Delivery Address specified in the Purchase Order by the applicable Delivery Date(s). The Supplier will give to Data Select at least 48 hours advance written notice of its intention to deliver any Product(s). The Delivery Date(s) or any other date and time agreed for delivery of the Products shall be of the essence of the Agreement. Without prejudice to any other available rights and remedies, to the extent that Products are not delivered on or before the applicable Delivery Date(s), Data Select may (without incurring any additional liability) cancel the relevant Purchase Order.

9.2 The Supplier shall not deliver the Products to Data Select in instalments. Where the parties have agreed in writing that the Supplier shall deliver in instalments (or Data Select agrees in writing to accept instalments for the delivery of the Products for a specific Purchase Order), a breach concerning any instalment (however caused or of whatsoever nature) shall entitle Data Select to terminate the Agreement and claim damages, without prejudice to Data Select's other remedies.

9.3 The Products shall be delivered to the Delivery Address with such delivery paperwork and/or in such electronic form as Data Select may reasonably require including a packing and delivery note detailing Data Select's order number, as specified in the Purchase Order (together "**Delivery Paperwork**"). Such Delivery Paperwork must be handed to the Delivery Address warehousing staff upon arrival at the Delivery Address and should not be placed in cartons. In addition, a copy of the Delivery Paperwork must be sent by email to Data Select at least 24 hours in advance of any attempted delivery. DELIVERIES WILL BE REFUSED IF THE DRIVER IS UNABLE TO PROVIDE THE RELEVANT DELIVERY PAPERWORK. The packing and delivery note supplied by the Supplier must include the following information:

- Supplier's name and address with contact telephone number.
- Date of delivery.

- Purchase Order number.
- Market(s) for re-sale (if applicable).
- Relevant SKU.
- Quantity delivered per SKU as a summary.
- For Products packed into cartons a breakdown of Products contained per carton.
- Total quantity of Products delivered or total quantity of cartons delivered per Purchase Order.
- Country of origin.
- For mobile and other electronic devices, serial numbers (to the extent printed on the Products supplied/Product packaging), IMEI numbers for mobile devices and, where SIMs are supplied, SIM IMEI/serial numbers

If all the above information is not included, the delivery may be refused without liability or other obligation on the part of Data Select.

## 10 Non-delivery

Where the Supplier fails to deliver the Products by the applicable Delivery Date(s) or otherwise than in accordance with the terms of the Agreement, Data Select shall be entitled:

- 10.1 to terminate the Agreement;
- 10.2 to buy the same or similar Products from another supplier; and
- 10.3 to recover the element of the cost of buying the Products from another supplier that exceeds the Price.

These remedies are without prejudice to clause 11 and all the other rights that Data Select has. Any rejected Products or surplus Products supplied in excess of those stated in the Purchase Order which are not removed by the Supplier after 30 days of receipt of notice may be sold on by Data Select without any liability to the Supplier. Data Select will be entitled to retain any proceeds of these sales. If storage and insurance charges are incurred by Data Select in relation to Product referenced in this clause, the Supplier will cover all costs.

For the avoidance of doubt, Data Select will be under no liability for the safe return or safekeeping of Product supplied in breach of the Agreement.

## 11 Consequential loss

Without prejudice to clause 10 and the other rights that Data Select has, in addition, the Supplier shall be liable for all direct, indirect and consequential loss arising from any breach of the provisions of the Agreement.

## 12 Property

The property in the Products shall pass to Data Select when the Products are unconditionally appropriated (by either party, or by or with the consent of either party) to the

contract or on delivery to Data Select, whichever event occurs first.

complete compliance with the provisions and the specifications of the Agreement.

### 13 Guarantee of title

The Supplier warrants that:

- 13.1 it has full clear and unencumbered title to all the Products;
- 13.2 at the date of delivery of any of the Products it shall hold such title in the Products as mentioned in clause 13.1; and
- 13.3 at the date of delivery of any of the Products it will have full and unrestricted right, power and authority to sell, transfer and deliver all of the Products to Data Select. From that date Data Select shall acquire a valid and unencumbered title to the Products.

### 14 Risk

- 14.1 The Products will be at the Supplier's risk until:
  - 14.1.1 the Products are delivered to Data Select (or are delivered at Data Select's direction); and
  - 14.1.2 the Products are found by Data Select to be in accordance with the provisions and the specifications of the Agreement.
- 14.2 If the Products are rejected subsequent to meeting the Acceptance Conditions or for any other reason, the risk in the Products and upon notice from Data Select to the Supplier, shall pass back to the Supplier on the date of such notice.

### 15 Deterioration in the Products

Without prejudice to the generality of the foregoing, the Supplier accepts the risk of deterioration of the Products which is necessarily incident to the course of transit.

### 16 Insurance

The Supplier shall maintain: (i) public and product liability insurance of not less than £10 million pounds sterling for any one or series of related claims; and (ii) professional indemnity insurance of not less than £5 million pounds sterling in relation to the performance of its obligations under the Agreement. The Supplier shall provide evidence of such insurance being in place and on risk to Data Select upon request together with evidence of payment of relevant premiums and other amounts due in relation to the same.

### 17 Acceptance of the Products

- 17.1 Data Select shall not have accepted, or be deemed to have accepted, the Products until Acceptance Conditions are fulfilled. The Acceptance Conditions are that:
  - 17.1.1 the Products have been delivered to the Delivery Address detailed in the Purchase Order; and
  - 17.1.2 Data Select has notified the Supplier in writing that the Products are in

- 17.2 Although the Acceptance Conditions have been fulfilled, Data Select may still reject the goods, reclaim the price paid by Data Select for such Products and make a claim for damages where the Products are not in complete compliance with the provisions and the specifications of the Agreement within: (i) 12 months of the date of purchase by an end user from Data Select in the case of non-electrical/electronic Products; and (ii) 24 months of the date of purchase by an end user from Data Select in the case of electrical/electronic Products.

### 18 Indemnity

The Supplier shall indemnify, and keep indemnified, Data Select against all claims, costs and expenses (including legal and professional costs and expenses) which Data Select may incur and which arise, directly or indirectly from the Supplier's breach of any of its obligations under the Agreement.

### 19 Termination

Without prejudice to any other right or remedy it might have, either party may terminate the Agreement at any time by notice in writing to the other party (the **Other Party**), such notice to take effect as specified in the notice:

- 19.1 if the Other Party is in substantial breach of the Agreement and, in the case of a breach capable of remedy within 14 days, the breach is not remedied within 14 days of the Other Party receiving notice specifying the breach and requiring it to be remedied; or
- 19.2 if the Other Party becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

### 20 Force Majeure

- 20.1 If a party is prevented, hindered or delayed in or from performing any of its obligations under the Agreement by Force Majeure (the **Affected Party**), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 20.2 The Affected Party shall promptly inform the other party in writing and shall furnish sufficient proof of the occurrence and duration of such Force Majeure.
- 20.3 The corresponding obligations of the other party will be suspended, and its time for performance

of such obligations extended, to the same extent as those of the Affected Party.

## 21 Limited status

The Supplier shall not enter into any contracts, make any representation or give any warranty for or on behalf of Data Select or pledge the credit of Data Select.

## 22 Variation

The Agreement may only be varied by a written document signed by the parties.

## 23 Third parties

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and no party, other than the signatories to the Agreement, shall have any rights under it. The terms of the Agreement or any of them may be varied, amended or modified or the Agreement may be suspended, cancelled or terminated by agreement in writing between the parties or the Agreement may be rescinded (in each case), without the consent of any third party.

## 24 Assignment and sub-contracting

24.1 The Supplier may not assign or transfer the Agreement as a whole, or any of its rights or obligations under it, without first obtaining the written consent of Data Select. In addition, the Supplier may not sub-contract any of its obligations under the Agreement without the prior written consent of Data Select provided always that the Supplier may sub-contract delivery of the Products to the Delivery Address.

24.2 If the Supplier is permitted by Data Select to sub-contract any elements of the Agreement, then the Supplier shall remain responsible and fully liable for all acts and/or omissions of such authorised sub-contractors in connection with the fulfilment of the Agreement and shall indemnify Data Select in respect of the acts or omissions of any such sub-contractor.

## 25 Notices

25.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be:

25.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at the address detailed on the first page of the Agreement; or

25.1.2 sent by email to the address of the nominated contact of the relevant party (as notified to the other party in writing from time to time).

25.2 Any notice shall be deemed to have been received:

25.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

25.2.2 if sent by pre-paid first-class post or other next working day delivery

service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

25.2.3 if sent by email, at the time of transmission or, if this time falls outside normal business hours on a Business Day, at 9.00 am on the next Business Day after transmission.

25.3 This clause 25 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 26 Entire agreement

The Agreement together with the documents referred to in it and any separate confidentiality agreement(s) between the parties constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of the Agreement.

## 27 Severance

If any provision or part-provision of the Agreement 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 clause shall not affect the validity and enforceability of the rest of the Agreement.

## 28 No Partnership

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between Data Select and the Supplier, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 29 Anti-Bribery

29.1 The Supplier shall:

29.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

29.1.2 comply with Data Select's anti-bribery, anti-corruption and ethics policies (as notified from time to time) and in each case as Data Select may update them from time to time (**Relevant Policies**);

29.1.3 have and shall maintain in place throughout the term of the Agreement its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies, and will enforce them where appropriate;

- 29.1.4 promptly report to Data Select any request or demand for any undue or suspicious financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement;
  - 29.1.5 immediately notify Data Select (in writing) if a public official in the Supplier's home country or in England or Wales becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no such public officials as direct or indirect owners, officers or employees at the date of the Agreement;
  - 29.1.6 within one month of the date of the Agreement, and annually thereafter, certify to Data Select in writing signed by an officer of the Supplier, compliance with this clause 29 by the Supplier and all persons referred to under clause 29.1.5. The Supplier shall provide such supporting evidence of compliance as Data Select may reasonably request.
- 29.2 The Supplier shall ensure that all of its suppliers, agents, subcontractors and other members of its group of companies who perform services or provide goods in connection with the Agreement do so only on the basis of a written contract which imposes on and secures from such persons terms equivalent to those imposed on the Supplier in this clause 29 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Data Select for any breach by such persons of any of the Relevant Terms.

**30 Compliance with laws and policies**

- 30.1 In performing its obligations under the Agreement, the Supplier shall and shall procure that each member of its group (if applicable) comply with:
  - 30.1.1 all applicable laws, statutes, regulations and codes from time to time in force (including but not limited to the Modern Slavery Act 2015; and
  - 30.1.2 the mandatory policies stipulated by Data Select and notified to the Supplier from time to time (including, but not limited to, any anti-slavery and human trafficking policy maintained by Data Select).
- 30.2 Data Select may terminate the Agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of clause 30.1.

**31 Governing law & Dispute Resolution**

- 31.1 The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 31.2 Save as for applications for and enforcement of interim relief or judgment by Data Select, for which the Courts of England and Wales shall have non-exclusive jurisdiction, the following shall apply to the resolution of any dispute relating to the validity, construction or performance of the Agreement:
  - 31.3 The parties shall in the first instance attempt to resolve any such dispute amicably via discussion between a senior authorised representative of each party.
  - 31.4 If, the parties are unable to reach agreement not longer than 28 days from the date of the dispute coming to light, any such dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause:
    - 31.4.1 The number of arbitrators shall be one.
    - 31.4.2 The seat, or legal place, of arbitration shall be London and / or England.
    - 31.4.3 The language to be used in the arbitral proceedings shall be English.
    - 31.4.4 The governing law for the purposes of the arbitration shall be the substantive law of England and Wales.

**These Purchase Terms were last updated on 30 January 2020.**