

## **Data Synergy UK Ltd Terms and Conditions of Sale (Revised Jan 2016)**

PLEASE READ THIS DOCUMENT CAREFULLY BEFORE PLACING ANY ORDER AND BEFORE INSTALLING OR USING ANY SOFTWARE SUPPLIED IN ACCORDANCE WITH THESE TERMS.

### **1 GENERAL TERMS**

#### **1.1 Definitions**

The following expressions shall have the following meanings: -

"Data Synergy" means Data Synergy UK Ltd, Cooper Buildings, Sheffield Technology Parks, Arundel Street, Sheffield, S1 2NS, UK. Company number 06682095.

"Data Hosting Service" means data held by Data Synergy on behalf of the Licensee.

"Documentation" means the technical product documentation accompanying the Software and available on the Data Synergy customer website.

"Estimated Delivery Date" means the date specified in a Quotation.

"Licence" means the software licence supplied separately by Data Synergy.

"Licensee" means the person, firm or company that has placed an Order.

"Number of Computers" means the number of computers specified in the Quotation which are authorised to use the Software.

"Order" means any purchase order issued by the Licensee for software and/or services from Data Synergy.

"Quotation" means any quotation for the supply of Software or Services issued by Data Synergy.

"Services" means services described in the Support Agreement and other services available from Data Synergy.

"Site" means the location for which the Software may be used identified in the Quotation/Order.

"Software" means each Data Synergy software program provided by Data Synergy, including software in which Data Synergy has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, including any Software Protection Device and any documentation, modifications, improvements or updates supplied to the Licensee under any Quotation/Order.

"Software Protection Device" means the hardware or software protection key supplied by Data Synergy.

"Specification" means the written specification of the Software.

"Software License" means the Software License supplied separately by Data Synergy.

"Support Agreement" means the Software Maintenance and Technical Support Agreement supplied separately by Data Synergy.

"Terms" means these General Terms.

## **1.2. Incorporation of Terms**

These Terms shall apply to all Software and Services supplied by Data Synergy under any Order placed by the Licensee. In the event of any ambiguity between these Terms and the provisions of the Software Licence Agreement and the Support Agreement, the terms of the relevant Agreement shall apply.

## **2 DELIVERY OF SOFTWARE**

2.1. Subject to Clause 5 Data Synergy shall use all reasonable endeavours to supply Software within 30 days of the receipt of the Licensee's Order. Data Synergy shall not be liable for any loss or damage sustained by the Licensee as a result of its failure to comply with the Estimated Delivery Date.

2.2. Delivery of Software shall be performed electronically. Delivery of physical media shall be at the expense of the Licensee.

2.3. If the Licensee fails to take delivery of the Software, Data Synergy may by notice in writing to the Licensee hold the Software at the Licensee's expense and delivery will be treated as having occurred as at the date of such notice.

## **3 INSTALLATION AND ACCEPTANCE**

3.1. Unless otherwise specified in the Quotation and confirmed by the Licensee's order, installation will be the Licensee's sole responsibility.

3.2. The Licensee will be deemed to have accepted the Software upon installation of the Software.

3.3. The Licensee shall at all times only use the software in accordance with the terms of the Software Licence Agreement on the authorised Number of Computers.

## **4 PRICES**

4.1. Prices quoted by Data Synergy for Software or Services are those in force at the date of issue of the Quotation. In the event that a Quotation is not accepted within 45 days Data Synergy reserves the right to modify the price of Software or Services at any time up to the delivery date thereof to take account of increased costs due to changes in any tax, duty or other impost taking effect prior to delivery or supply of the same.

4.2. All prices are quoted exclusive of VAT, sales tax or similar imposts for which the Licensee shall be additionally liable.

## **5 PAYMENT AND TITLE**

5.1. Data Synergy shall submit invoices at the time of despatch of the software.

5.2. The invoice shall be payable within 28 days.

5.3. Without prejudice to any other rights contained in these terms, Data Synergy shall be entitled to charge the Licensee interest at the rate of 4% per annum above the Bank of England base rate on any balance outstanding calculated daily and compounded daily both before as well as after judgement until such sum is paid in full.

5.4. Subject always to clause 5.5 below, title to physical media upon which the software has been copied shall only pass upon payment of the price in full including any interest charges under clause 5.3 above.

5.5. As from delivery Software supplied shall be held by the Licensee only upon the terms of the Software Licence Agreement supplied separately by Data Synergy.

## **6 WARRANTIES**

6.1. The separate Warranties set out in the Software Licence Agreement and the Support Agreement shall apply to the Software or Services respectively subject to the terms set out below.

6.2. Save as expressly provided in these Terms all other warranties whether implied by statute or common law or otherwise are hereby expressly excluded to the fullest extent permitted by law.

## **7 INTELLECTUAL PROPERTY**

7.1 The Software is licensed and not sold.

7.2 The Licensee agrees that no intellectual property rights are transferred under this Agreement, and Data Synergy and its licensors retain all right, title, and interest in all intellectual property rights subsisting in or related to the Software.

7.3 The Licensee shall not (a) reproduce the Software; (b) modify, incorporate into or with other software, or create a derivative work of any part of the Software or Documentation; (c) reverse-engineer the Software or recompile, disassemble, or otherwise attempt to derive the source code of the Software; (d) distribute, sublicense, lease, rent, loan or otherwise transfer the Software, or the Documentation to any third party; or (e) remove from the Software or alter any of the trademarks, trade names, logos, patent, or copyright notices or markings on the Product or the Documentation.

## **8 DATA HOSTING SERVICE**

8.1. Certain Software may be available with an optional Data Hosting Service operated by Data Synergy or its suppliers.

8.2. Data Synergy shall use all reasonable endeavours to safeguard the Licensee's data but shall not be liable for any loss resulting from use of the Data Hosting Service including data loss, temporary system unavailability or inadvertent disclosure of data to a third party.

8.3 The Data Hosting Service shall retain data for a minimum of 2 years. Older data may be archived offline and retrieved upon request. There may be a charge for this service.

8.4 The public interface provided for the Data Hosting Service shall be the only means used to access the system. Data Synergy may provide alternative data access mechanisms or custom data retrieval upon request. There may be a charge for this service.

8.5 Data Synergy may periodically revise the features available to improve functionality, security or reliability and reserves the right to deny access in the event of system abuse.

8.6 All uploaded data shall remain the property of the Licensee. The Licensee agrees that data may be stored outside of the EU and grants Data Synergy the right to use the data internally and to publish the data in aggregate or anonymised form.

## **9 LIABILITY**

9.1. Notwithstanding any provisions to the contrary in these Terms Data Synergy does not seek to exclude or limit liability for death or personal injury arising from or as a consequence of the negligence of Data Synergy, its employees or agents.

9.2. Without prejudice to the terms of above it is expressly declared that in no event shall Data Synergy's total liability to the Licensee for all damages, losses, causes of action or otherwise exceed the amount paid by the Licensee for the Software or Services to which the liability relates.

9.3. Data Synergy shall not be liable to the Licensee for any consequential, special or indirect loss or damage (whether for loss of profits or contracts or otherwise) and whether arising from negligence, breach of contract or howsoever even if Data Synergy had previously been advised of the possibility of such damage or loss.

## **10 RE-EXPORT**

Regardless of any disclosure by the Licensee to Data Synergy of the ultimate destination of the Software, the Licensee will not export, directly or indirectly, any Software without first obtaining any licences required from the Department of Trade and Industry or other agency of the United Kingdom Government. The Licensee shall indemnify Data Synergy for any liability which may arise from the Licensee's direct or indirect export of the Software.

## **11 SOFTWARE PROTECTION**

11.1 The Licensee is responsible for the Software Protection Device where it is a hardware key. In the event that the Software Protection Device is lost or damaged it may be necessary for the Licensee to acquire a replacement Licence at its expense.

11.2 The Licensee is responsible for the Software Protection Device where it is an electronic key. The Licensee shall keep such an electronic key confidential and not disclose it to any third party. The Licensee shall be liable for losses and costs resulting from the deliberate or negligent disclosure of an electronic key.

## **12 PRESS RELEASE**

Unless agreed otherwise in writing the Licensee agrees to permit Data Synergy to release information to the media relevant to the Software sale governed by these Terms provided that each such release is approved in advance by the Licensee (such approval not to be unreasonably withheld or delayed).

## **13 WAIVER**

No waiver by either party of any breach or alteration by the other party of any obligations contained in these Terms, which shall only be effective when in writing and signed by an authorised officer of the party not in default, shall constitute a waiver of any other obligation contained herein.

## **14 FORCE MAJEURE**

Data Synergy shall not be liable and shall be deemed not to be in default for any delay or failure in performance under these Terms resulting from Acts of God, civil or military action, acts of public enemy, war, fire or explosion, earthquake, floods, the elements, strikes, labour or transportation difficulties, inability to obtain export or import licences or any other cause beyond its control.

## **15 ENTIRE AGREEMENT**

These Terms constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior understandings or agreements written or oral regarding such subject matter.

## **16 CONTROLLING LAW AND SEVERABILITY**

16.1. These Terms shall be governed by and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

16.2. If for any reason a court of competent jurisdiction finds any provision of these Terms or portion thereof to be unenforceable that provision shall be enforced to the maximum extent possible so as to effect the commercial intent of the parties and the remainder of the Terms shall continue in full force and effect.