

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

Seller means Datec PNG Limited hereafter referred to as Datec .

Customer means the person or company placing an order with the Seller for the purchase of products and services.

Software includes all relevant documentation, manuals, printed and written matter.

Products means all products described on Datec s invoice or packing slip and these include all Software, Computer Hardware, Peripherals, Consumables and Telecommunications Equipment supplied by Datec whether under Licence or otherwise from time to time.

GENERAL

a) If the Customer or its agent takes delivery of the Products from Datec such acceptance shall constitute confirmation of Customer s acceptance of Datec s offer in accordance with these Terms and Conditions of Sale.

b) Terms and conditions contained in any form, order or other writing of the Customer and which are at variance with or additional to these terms and conditions are not binding upon Datec unless specifically accepted by Datec in writing.

2. (PAYMENT) TRADING TERMS

The Customer at its own expense shall arrange collection of Products from Datec s premises. **Alternatively, Datec at its sole and absolute discretion may arrange physical delivery of Products to the Customer at the Customer s business address, such delivering being at the sole cost of the Customer which may be waived by Datec at its discretion. The Customer shall be deemed to assume and shall be liable for the loss or damage to the Products from the time they are on or within the boundaries of the Customer s premises.**

a) Payments for Products supplied and/or services rendered shall be made in full by the Customer to Datec without deduction or demand within the approved term as advised in writing by Datec or in the absence of a term approved by Datec within fourteen (14) days from statement date.

b) The Customer shall pay interest on all amounts due to Datec which are in default at the rate of two percent (2%) above the then current commercial overdraft rate as published by any of the leading Banks in Papua New Guinea. An account will be in default if it has not been paid within the approved terms or within fourteen (14) days from the statement date.

c) If the Customer fails to make payment in accordance with sub-clause (a) for each and every supply of Products and each every service rendered;

(i) Datec may at its sole and absolute discretion suspend the provision of credit to the Customer until all amounts owing by the Customer are paid in full;

(ii) All amounts owing by the Customer to Datec shall become due and payable forthwith without demand;

(iii) **Datec may at its discretion register any customer that defaults in payments and has debts over their trading terms with the Credit & Data Bureau of PNG.**

d) A certificate signed by an approved officer of Datec stating the amount due (including any interest) by the Customer to Datec shall be conclusive evidence of the facts stated therein.

e) If the Customer fails at any time to comply with these trading terms and conditions all amounts shall become ipso facto due, owing and payable without deduction or demand to Datec and Datec may cancel the provision of credit to the Customer forthwith without notice in addition to exercising any other rights it might have.

3. RETENTION OF TITLE

a) (i) Notwithstanding any other clause contained herein the full legal and equitable title in the Products shall be retained by Datec its lawful successors in title and will only be transferred when the Customer s indebtedness to Datec or its lawful agents for the purpose under this agreement, together with any applicable Government of Papua New Guinea taxes or interest payable is fully discharged.

(ii) Until the moment of receipt of full payment of the entire Customer s indebtedness as referred to in paragraph (a) herein the Customer shall keep the Products for and on behalf of Datec.

b) Notwithstanding any other clause contained herein the risk in all Products shall pass to the Customer immediately upon delivery and all Products must be paid for notwithstanding the destruction thereof or any damage thereto however caused.

c) The Customer shall ensure the Products are stored in such a way that they are clearly identifiable as the property of Datec and are not intermingled with the property of the Customer or any other person. The Customer shall not in any way alter or treat the Products so as to change their quality or nature in any way until as aforesaid and further shall ensure that the Products remain clearly marked as Datec s property.

d) Payment of the amounts owed by the Customer to Datec under this Agreement shall be deemed to have been made when cash has been received or cheques for the price and all other moneys owing under this agreement have been met and honoured in full.

e) (i) While Datec retains full legal and equitable title in the Products the Customer shall not bail, pledge, mortgage, charge, grant a lien over, lease or assign the Products by any other way of security.

(ii) Notwithstanding any period of credit allowed in Datec s terms and conditions of sale, the Customer shall account to Datec for the purchase price of the Products, (or such part thereof as represents the Products on-sold) as soon as the Products (or any of them) are on-sold by the purchaser and the proceeds of such sale are received by the purchaser.

f) The Customer shall notify Datec in writing of any intended sale of the Customer s business, which includes or purports to include the Products as part of the Customer s stock.

g) In the event of the Customer failing to pay for the Products pursuant to this Agreement or the determination or repudiation of the

contract (howsoever occurring) Datec is hereby irrevocably authorised to enter onto the premises of the Customer and re-posses the Products and any other Products in the Customer s possession the property which is vested in Datec

4. LIABILITY

Datec shall not be liable to the Customer or to any other person whomsoever for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Products (or any of them) parts of the Products, or otherwise, other than as expressly imposed by statutes in terms of which it is not possible to limit or exclude liability.

Notwithstanding the generality of (a) above, Datec expressly excludes liability for consequential loss or damage including but not limited to loss of profit, business, revenue, and goodwill or anticipated savings.

The sole liability of Datec for any loss as is contemplated by sub-clause (a) above shall be limited to the price or licence fee or other sum paid by the Customer to Datec for the Products, licence or service from which such loss or damage directly arose.

5. RETURNS

a) The Customer must notify Datec in writing of Products they wish to return within seven (7) days from the date of the invoice relating to that or those Products subject to compliance with the provisions of sub-clauses (b), (c), (d) (e) and (f) below and subject also to the provisions of Datec s Returns Procedure as set from time to time.

b) Each claim of the Customer for return shall be dealt with under Datec s Customer Returns Procedure. The Customer acknowledges that he is aware of the terms of the said Customer Returns Procedure and further acknowledges that his agreement incorporates the provisions contained therein.

Products to be sent or returned to the Customer following compliance with the Customer Returns Procedure shall be sent by Datec to the Customer by ordinary freight pre-paid, subject to (c) below. If the Customer requests the same to be sent by other than ordinary freight the excess cost of such accelerated or special freight shall be borne by the Customer.

c) Datec shall have no liability for any damage or defects in the Products that have been caused by improper storage, warehousing or transport, or by neglect, abuse or improper use, installation, maintenance or unauthorised repair to our Products.

d) This Returns Procedure shall not extend to Products which have been added to modified, varied or changed by any person or party other than Datec.

e) **Return of Products Sold on a "No Return Basis"**
Products sold on a no returns basis may not be returned for any reason other than the goods being faulty or Dead On Arrival (DOA). The Customer MUST notify Datec in writing within seven (7) days from date of invoice of any Products being Dead On Arrival.
All DOA returns MUST be delivered to Datec Office in its original condition and its original packaging.

f) No Fault Returns

No fault returns refers to Products which Customers wish to return for reasons other than the Products are faulty or Datec made an error in the shipment/delivery. Datec may accept the returns of goods under this clause subject to the following conditions:

(i) All No Fault returns will incur a re-stocking fees equivalent to five percent (5%) of the invoice value of the goods or Fifty Kina (K50.00) plus VAT whichever is higher;

(ii) All Products **MUST** be returned in its original condition and in its original packaging. The Customer acknowledges that Datec is under no obligation to accept any returns if any of the Products are not in its original condition or its original packaging;

(iii) The Customer will deliver the Products to Datec s premises in accordance with Datec s Returns procedure. In the event that Datec is required to collect the goods from the Customer s premises additional Fifty Kina (K50.00) plus VAT per trip will be charged to the Customer;

(iv) All returns of shrink-wrapped software will only be accepted if the seal and wrapping is intact. Datec will NOT accept any returns where the Customer has tampered with the packaging or the seal.

6. PATENTS, TRADEMARKS, COPYRIGHT AND INTELLECTUAL PROPERTY RIGHTS

a) The Customer acknowledges that any and all of the trademarks, trade names, patents, copyright and other intellectual property rights embodied in or in connection with the Products and any information, documentation, parts or software relating thereto are the property of Datec or such other manufacturer/supplier of any such rights and further acknowledges that Datec has the right to import and distribute the Products in Papua New Guinea.

b) The Customer also acknowledges that such copyright and intellectual property rights and other rights belonging to Datec or other manufacturer/supplier as the case may be, are only used by the Customer with the consent of Datec or other manufacturer/supplier during the continuation of this Agreement and such consent extends only to use essential for the direct purposes of the proper implications of this Agreement. Upon expiry or termination hereof the Customer shall forthwith discontinue such use without receipt of compensation for such discontinuation, and the Customer acknowledges that upon expiry or termination hereof any licence of intellectual property rights in software created or implied hereby would immediately cease.

c) The Customer shall not during or after the expiry or termination of the Agreement without the prior written consent of Datec or other manufacturer/supplier use or adopt any name, trade name, trading style or commercial designation or design

used by Datec or other manufacturer/supplier as the case may be nor shall the Customer repackage any Products, reproduce any artwork appearing on the package of any Products or copy sell or hire or offer for sale or hire a copy of the Products.

d) The Customer shall indemnify Datec against all liabilities, costs and expenses which Datec may incur as a result of work done in accordance with the Customer s

specifications or as a result of the combination or use of the Products with other equipment parts or software not supplied by Datec involving infringement of any patent, copyright or other proprietary right.

7. CONFIDENTIAL INFORMATION

a) Datec has imparted and may from time to time impart to the Customer certain confidential information and documentation relating to the Products, their marketing use, maintenance, operation and software including technical specifications therefore and the Customer hereby agrees that it shall use such confidential information solely for the purposes of this Agreement and that during the operation of this Agreement or thereafter it shall not disclose, whether directly, or indirectly to any third party such information other than is required to carry out purposes hereof.

b) In the event that disclosure is necessary, the Customer will obtain from such third parties binding Agreements to maintain in confidence the information disclosed to the same extent at least as the Customer is so bound to Datec hereunder.

c) The Customer agrees that immediately on expiry or termination hereof it shall cease to use and shall return or destroy (as Datec may instruct) such information and documentation and shall not itself or through any subsidiary, agent or other party sell, market, distribute, manufacture or otherwise deal with the Products or have the same manufactured for it based on any technical or confidential information supplied to it by Datec.

8. ASSIGNMENT

The Customer shall not assign this Agreement whether voluntarily, involuntarily or by operation of law without the prior written consent of

Datec. No such assignment by the Customer howsoever occurring shall relieve the assignor of its obligations hereunder.

9. WAIVER

Failure or neglect by Datec to enforce at any time the provisions hereof shall not be construed nor shall be deemed to be a waiver of Datec s rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice Datec s rights to take subsequent action.

10. SEVERABILITY

In the event that any or any part of these terms, conditions or provisions shall be determined invalid, unlawful or enforceable to any extent such terms, conditions or provisions shall be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

11. WHOLE AGREEMENT

This document supersedes any arrangements, understandings provisions or Agreements made or existing between the Customer and Datec prior to or simultaneously herewith and constitutes the sole and entire Agreement between the parties and except as provided herein no variation, amendment, modification or addition to any of its terms shall be of any force or effect unless the same be in writing

and signed by and on behalf of the Customer and Datec.

12. COMPLIANCE WITH APPLICABLE U.S. LAWS

All technology, technical information and technical data received directly or indirectly hereunder by the Customer from Datec is intended solely for the use of Customer and its Customers. All Direct Products (as defined in the United States Department of Commerce Comprehensive Export Schedule) of such technology, technical information and technical data are intended solely for the use of the Customer and its Customers within such countries as are forbidden or restricted now or hereafter by United States Export Administration laws and all other applicable United States laws, as now or hereafter exist. Datec expressly reserves the right to refuse any order which, in Datec s sole judgement is or may be a violation of such laws on the part of the Customer

13. LAW

The Parties agree that this Agreement and the provisions hereof shall be construed in accordance with the Laws of Papua New Guinea save to the extent necessary to give full and proper effect to the provision of and intentions of Clause 12.

14. ACCESS TO INDIVIDUALS CONSUMER ACCOUNTS

The Customer hereby authorises Datec to make enquiries at any time and from time to time to a credit reporting agency relating to the Customer s individual account should it be required and to contact the stated trade reference at anytime.

15. PROVISION OF CREDIT

The provision of credit and/or the continued provision of credit by Datec to the Customer from time to time shall be in the absolute discretion of Datec.

Datec may in its absolute discretion:

- (i) Extend credit to the Customer, or
- (ii) Continue to extend credit to the Customer, or
- (iii) Extend and/or continue to extend credit to the Customer subject to the provision of security in a form acceptable to Datec, and/or
- (iv) At any time and from time to time vary or cancel the credit facility available to the Customer.

16. DIFFERENCES AND COMPLAINTS

Subject to the provisions of Clause 4 Datec shall not be liable in respect of any difference or complaint arising out of this Agreement unless the Customer advises Datec in writing of the difference or complaints not later than fourteen (14) days after the date of the occurrence of the events or circumstances on which the difference or complaint is based.