Dataquest

Dataquest Group Limited - Standard Terms & Conditions of Business – Supply of Products

1. General

1.1 The following are the terms and conditions ('The Terms') on which Dataquest Group Limited ('Dataquest') and all companies in the Dataquest Group including Dataquest Technology, Dataquest London, Dataquest West, Dataquest Heathrow and Dataquest Netherlands, shall supply products ('the Products') to any buyer ('the Buyer').

1.2 Unless Dataquest agrees otherwise in writing, these Terms shall govern the supply of Products by Dataquest to the exclusion of any other terms including without limitation any conditions, warranties and representations written or oral, express or implied, even if contained in any of the Buyer's documents which purport to provide that the Buyer's terms will prevail.

2. Orders

2.1 The Buyer shall order Products on Dataquest's standard customer acceptance form ('the Order') and a contract will be formed at the earlier of the date on which the Order is accepted by the signing of the Order by a director or authorised signatory of Dataquest or by the delivery of Dataquest's invoice in respect of the Order to the Buyer's address given on the Order.

2.2 Dataquest may make any changes in the specification of Products to conform with any applicable safety or other statutory requirements, or as a result of product improvements or manufacturing requirements which do not materially affect their quality or performance.

2.3 Subject to term 4.4 the Buyer may not cancel an order or part thereof without the prior written agreement of Dataquest and then only on terms which fully indemnify Dataquest against all loss, costs, damages, claims or actions, charges and expenses arising out of or incurred by Dataquest as a result of such cancellation, including but not limited to the cost of transport, packaging, insurance and handling charges for both delivery to the Buyer and return to Dataquest

2.4 If Dataquest is unable, for whatever reason, to arrange required finance for Products with a third party finance company, the Buyer shall purchase the Products itself and shall pay to Dataquest 50% of the full price of the Products within 14 days of Dataquest's invoice, and the balance of the full price on delivery of the Products.

2.5 If Dataquest incorporates settlement of an existing leasing agreement within a new leasing agreement, then the Buyer agrees to accept responsibility to discharge its liability to its existing funder immediately on receipt of funds from Dataquest.

3. Price and Payments

3.1 Unless otherwise agreed in writing, the price for Products is that prevailing (plus VAT if applicable) at the time the Order is accepted unless the Buyer requests delivery more than one month after the date of the Order, in which case the price shall be that prevailing at the time of delivery.

3.2 The price for Products includes the cost of packaging, insurance and transport to the Buyer via Dataquest's nominated carrier in Dataquest's standard delivery time scales. Where other arrangements are required by the Buyer (e.g. quicker delivery than standard) the Buyer shall pay Dataquest's additional charges for transport, packaging and insurance.

3.3 Dataquest shall be entitled to invoice the Buyer for the price of Products on or at any time after Products are dispatched from Dataquest's warehouse. If Products are to be collected by the Buyer Dataquest shall be entitled to invoice the Buyer for the price at any time after Dataquest has notified the Buyer that the Products are ready for collection.

3.4 Payment shall be made by the Buyer in the currency on the invoice no later than the last working day within 14 days of the invoice being issued or such other period as may be agreed with Dataquest in writing. The time of payment shall be of the essence.

3.5 If the buyer fails to make any payment when it becomes due then, without prejudice to any other right or remedy available to Dataquest, Dataquest shall be entitled to:-
(a) cancel the Order and/or suspend any further deliveries to the Buyer
(b) appropriate any payment made by the Buyer to such of the Products (or the goods or services supplied under any other contract between the Buyer and Dataquest) as Dataquest may think fit (notwithstanding any purported appropriation by the Buyer);
(c) charge interest on the unpaid amount on a day to day basis (both before and after any judgment) from the due date to the date of actual payment (both dates inclusive) at the rate of 4% per annum above Barclays Bank Plc base rate from time to time; and
(d) where appropriate terminate any Agreement between Dataquest and the Buyer.

3.6 In the event that Dataquest arranges any lease or other finance agreement for the Products or any of them, any connected corporate or individual guarantee shall also apply to this agreement.

3.7 If, at the expiration of any leasing agreement to which the Products are subject, the Buyer wishes to continue leasing the Products, Dataquest will acquire the Products from the lessor and, from expiration of the leasing agreement until the Buyer shall have given Dataquest no less than 90 days written notice to terminate the leasing, such notice to expire on an anniversary of the expiration of the leasing agreement, the Buyer shall pay Dataquest such amounts as were payable under the leasing agreement on a monthly/quarterly basis at Dataquest's option .

3.8 It being the intention of Dataquest and the Buyer that any agreement entered into by the Buyer with any party for leasing of the Products (or any of them) and any agreement entered into by the Buyer with Dataquest for maintenance of the Products (or any of them) should commence and expire on the same dates:-
(a) if any Products are, or become, subject to a leasing agreement for a lesser period than any maintenance agreement (whether such leasing and maintenance agreements be of the same date or not), the Buyer, shall, from expiration of the leasing agreement to expiration of the maintenance agreement, and in addition to such amounts as are payable under the maintenance agreement, pay to Dataquest such amounts as were payable under the leasing agreement on a monthly/quarterly basis at Dataquest's option.
(b) if any Products are, or become, subject to a maintenance agreement for a lesser period than any leasing agreement (whether such maintenance and leasing agreements be of the same date or not), the buyer, shall, from expiration of the maintenance agreement to expiration of the leasing agreement, and in addition to such amounts as are payable under the leasing agreement, pay to Dataquest such amounts as were payable under the maintenance agreement on a monthly/quarterly basis at Dataquest's option.

4. Delivery and inspection

4.1 Unless otherwise agreed in writing, delivery shall be deemed to take place when the Products are delivered to the Buyer's address as detailed on the Order or collected by the Buyer from such address as Dataquest shall notify.

4.2 Dataquest shall take reasonable steps to effect delivery in accordance with any agreed dates but no guarantee as to the dates shall be implied. Time for delivery shall not be of the essence unless otherwise agreed by Dataquest in writing.

4.3 Unless otherwise agreed in writing, Dataquest shall be entitled to deliver the Products in one or more consignments. Failure to deliver any one or more consignment shall not entitle the Buyer to treat the Order as a whole as repudiated.

4.4 If delivery of any individual Product has not taken place within three months of any estimated delivery date given by Dataquest, the Buyer shall be entitled, by written notice, to cancel its order in respect of that individual Product.

4.5 Dataquest shall not be liable for any loss, consequential or otherwise, or damage suffered by the Buyer as a result of late delivery or non-delivery of the Products or any of them for whatever reason.

4.6 The Buyer shall inspect the Products and packaging immediately on delivery and confirm that the quantity and type of Products delivered are the same as those on the Order by completing a delivery satisfaction form. Within seven days of delivery the Buyer shall give Dataquest written notice of any damage to the Products in transit. If the Buyer fails to complete a delivery satisfaction form or give written notice of any damage, the Products will be deemed to be those ordered, in good and satisfactory condition and to have been accepted by the Buyer.

4.7 In the event that Dataquest accepts that the Products, or any of them, are not in accordance with the Order or were damaged before delivery, the Buyer's sole remedy shall be limited, as Dataquest may elect, to the replacement of the Products or the supply of replacement parts necessary to repair the damaged Products.

4.8 The Buyer shall keep intact as delivered (including all packaging) any Products the subject of a claim by the Buyer under clause 4.6 for a minimum 21 days from notification of such claim within which period Dataquest or its authorised agent shall have the right to investigate the claim and inspect the Products and related packaging.

4.9 If the Buyer fails to take delivery of the Products or fails to give Dataquest adequate delivery instructions at the time that the Order is placed then, without prejudice to any other right or remedy available to Dataquest, Dataquest may:-
(a) Store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and additional transportation; or
(b) Sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for any excess over the unpaid price under the Order or charge the Buyer for any shortfall below the unpaid price under the Order.

5. Risk and property

5.1 Risk of damage to or loss of the Products shall pass to the Buyer:
(a) in the case of Products to be collected by the Buyer, at the time when Dataquest notifies the Buyer that the Products are available for collection; or
(b) In the case of Products to be delivered by Dataquest, at the time of delivery or, if the Buyer fails to take delivery, the time when Dataquest tenders delivery;

5.2 Notwithstanding delivery and the earlier passing of risk in the Products, title in all the Products shall remain with Dataquest and shall not pass to the Buyer until such time as:
(a) Dataquest has received payment in full of the price of all of the Products (whether or not the Products are delivered in instalments and some have been paid for); and (b) all other sums whatever due from the Buyer to Dataquest have been paid in full. Until such time, the Buyer shall keep any Products delivered to it as bailee for and on behalf of Dataquest and
(a) shall insure the delivered Products against any loss or damage with an insurance office of good repute;
(b) shall store the delivered Products separately or in some other way ensure that they are readily identifiable as the property of Dataquest;
(c) irrevocably authorises the representatives of Dataquest to enter upon the Buyer's premises where the delivered Products are or are thought to be stored for the purpose of repossessing them;
(d) shall keep and retain the delivered Products free from any charge, lien or other encumbrance thereon.

5.3 Notwithstanding clause 5.2, until Dataquest has received full payment of the price of the Products together with all other sums due from the Buyer, the Buyer shall be entitled to offer for sale and sell the Products in the ordinary course of business as principal vis-à-vis sub buyers and not as agent for Dataquest at the best obtainable price. Dataquest shall be legally and beneficially entitled to the proceeds of such sales and the Buyer shall pay such proceeds into a separate and identifiable form. The Buyer shall not pay the proceeds of sale into any bank account which is overdrawn. Forthwith upon receipt of the proceeds of sale the Buyer shall pay to Dataquest the sums outstanding to Dataquest in respect of the Products and all other sums due from the Buyer to Dataquest and shall not use or deal with the proceeds of sale in any other way whatsoever until all such sums have been paid. The Buyer shall also hold the proceeds of any claims against sub-buyers on trust for Dataquest. The Buyer's breach of its obligations under clause 5.2 shall not affect Dataquest's rights under this clause 5.3.

5.4 The Buyer's right to sell the Products under clause 5.3 if the Products have not been paid for and other sums are due to Dataquest from the Buyer shall immediately cease if the Buyer ceases to trade or is insolvent or enters into liquidation whether compulsorily or voluntarily or becomes subject to an administration order or has a receiver (or trustee in bankruptcy) appointed over all or any part of its assets or compounds with or convenes a meeting of its creditors or takes or suffers any similar action in consequences of a debt.

5.5 If the Buyer incorporates the Products within other equipment or products ("the New Products"), provided that the Products remain a readily identifiable and removable part of the New Products clause 5.2 and 5.3 shall apply.

5.6 The provisions of clauses 5.2 to 5.5 shall survive the termination of the Agreement for whatever reason.

6. Liability and indemnity

6.1 The Products are under warranty as set out in the Dataquest Service Operations Manual currently in force, a copy of which can be provided to the Buyer upon request and which is subject to revision from time to time.

6.2 Any warranty given by Dataquest is subject to the following conditions:
(a) Dataquest shall be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
(b) Dataquest shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Dataquest's instructions (whether oral or in writing), misuse or alteration or repair of the Products without Dataquest's approval;
(c) Dataquest shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;
(d) The above warranty does not extend to parts, materials or equipment not manufactured or supplied by Dataquest, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Dataquest.

6.3 Any condition, warranty or other term, other than those relating to the title of the Products, which might otherwise be implied or incorporated within these Terms by reason of statute or common law or otherwise is hereby expressly excluded to the extent permitted by law.

6.4 The maximum liability of Dataquest under any Order (except in respect of death or personal injury caused by the negligence of Dataquest) shall be limited to the value of the Products the subject of that Order. In particular, but without limitation, Dataquest shall, except in respect of death or personal injury caused by Dataquest's negligence, not be liable to the Buyer for any other loss, damage, cost or expenses of any nature whatsoever incurred or suffered by the Buyer or by a third party whether direct or consequential arising out of any dispute, claims or proceedings made by or brought against the Buyer directly or indirectly in respect of or in connection with the manufacture and/or supply of the Products to the Buyer or the distribution, sale or use of or any dealings with the Products by the Buyer or a purchaser from the Buyer or any third party.

6.5 The Buyer shall indemnify Dataquest in respect of all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith to the extent that the damage, injury or loss shall have been occasioned by any breach by the Buyer of its obligations to Dataquest hereunder or by the Buyer's fault or negligence.

6.6 Dataquest shall not be liable to the Buyer or be deemed to be in breach of the Order by reason of any delay in performing, or any failure to perform, any of Dataquest's obligations in relation to the Products, if the delay of failure was due to any cause beyond Dataquest's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond Dataquest's reasonable control:
(a) Act of God, explosion, flood, tempest, fire or accident;
(b) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
(c) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
(d) Import or export regulations or embargoes;
(e) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the seller or of a third party);
(f) Difficulties in obtaining raw materials, labour, fuel parts or machinery;
(g) Power failure or breakdown in machinery.

7. Intellectual Property

7.1 The sale of the Products to the Buyer shall not confer any right or license upon the Buyer to use any logo, trademarks or other intellectual property rights owned or used by Dataquest subsisting in or relating to the Products and the Buyer may only make use of such intellectual property rights as is permitted in any Agreement with the Buyer for the time being in force.

8. General

8.1 No waiver by Dataquest of any breach of these Terms shall be considered as a waiver of any subsequent breach of the same or any other provision of these Terms.

8.2 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

8.3 These Terms shall be governed by English law and the English Courts shall have exclusive jurisdiction over any dispute which may arise hereunder.

8.4 Unless otherwise agreed in writing the Buyer may not assign the benefit or the burden of any Order with Dataquest.

8.5 The provisions of the United Nations Convention on Contracts for the International Sale of Goods (otherwise known as the Vienna Convention) shall not apply to the sale of Products under these Terms.

8.6 Unless expressly provided in these Terms, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Contract.