

Datacard South Pacific (NZ) Limited

Terms and Conditions of Sale

These terms and conditions, together with Datacard South Pacific (NZ) Limited ("Datacard") sales order form ("Order") and any other attachment(s) listed by Datacard in the Order, constitute the entire agreement ("Agreement") between Datacard and the purchasing party listed on the Order ("Customer") under which Datacard agrees to deliver and Customer agrees to purchase, the products ("Products") and services ("Services") (collectively, the "Deliverables") identified on the Order.

Term. The term of this Agreement is as shown on the Order, and if no term is shown on the Order, this Agreement will terminate at the time of shipment of the last Deliverable to the address shown on the Order. This Agreement will not automatically renew.

Payments. Customer will pay all charges, expenses, penalties and fees specified in this Agreement in United States dollars and in a timely manner. Unless otherwise specified, all invoiced amounts shall be due and payable by the 30th day following the date of invoice. If facts or circumstances lead Datacard to reasonably conclude that Customer will not, or will not be able to, pay amounts due hereunder when they become due, Datacard may, without breach of this Agreement or penalty, withhold or stop delivery hereunder. Customer understands and agrees that Datacard has the right to apply any credit balance in Customer's account(s) against any amount owed to it by Customer. The Customer will pay Datacard interest in respect of any and all amounts due, but not paid, which interest will compound at a rate equal to 1½% per annum above the interest rate charged from time to time by the Bank of Montreal.

Shipment. Absent a contrary delivery term elsewhere in this Agreement, Products shall be shipped at Datacard's sole discretion either EXW (INCOTERMS 2010) if Datacard does not provide export clearance or FCA (INCOTERMS 2010) if Datacard does provide export clearance. Customer shall be responsible for obtaining all insurance needed and for all shipping charges. Unless otherwise provided elsewhere in this Agreement, Deliverables will be deemed to be accepted by the Customer upon delivery in accordance with the INCOTERMS stated above. Customer is responsible for installation of the Deliverables.

Taxes. All prices as set forth in this Agreement are exclusive of any applicable local taxes (including, without limitation, goods and services tax levied in accordance with New Zealand goods and services tax laws) which are imposed as a result of transactions under this Agreement, and the same shall be invoiced as a separate item to Customer, unless Customer shall have supplied to Datacard documentation showing that Customer is authorized by law to be exempt from taxation or to pay any such taxes directly to the appropriate governmental jurisdiction. To the extent that New Zealand goods and services tax is payable by Datacard in respect of the supply of Deliverables, the Customer agrees that, in addition to the price specified in the Order, it must pay an amount equal to that price multiplied by the rate at which such goods and services tax is calculated from time to time. The obligation to pay such additional amount by way of goods and services tax is conditional on Datacard providing a tax invoice for the purposes of the New Zealand goods and services tax laws. Income taxes, or similar taxes, assessed or imposed on Customer shall remain Customer's responsibility. If the Customer is or was required by any laws to make any deduction or withholding from any payment due to Datacard, then, despite anything to the contrary contained in this Agreement, the gross amount payable by the Customer will be increased so that, after such deduction or withholding, the net amount received by Datacard will not be less than Datacard would have received had no such deduction or withholding been required.

Title. Datacard retains title in and to any inventory of Products shipped to Customer and any proceeds or accounts receivable related thereto, regardless of the manner or terms of shipment, until full payment therefor has been made by Customer. Until such amounts due to Datacard by the Customer have been paid in full Datacard has a security interest in all Products. Customer agrees to execute such security agreements and financing statements as are customarily used in Customer's locale and to do all such things as may be required by Datacard from time to time to perfect Datacard's security interest in the Products, to be filed as Datacard deems appropriate. Until such time as title in the Products passes to the Customer, Datacard is entitled to require the Customer at any time to deliver up the Products to Datacard and if the Customer fails to immediately do so, Datacard may enter any premises under the control of the Customer or its agents where the Products are stored and repossess such Products. The Customer must ensure that all third party storage premises used to store the Products allow Datacard to do this. Subject to the above provisions, the parties agree that all ownership, legal title, risk of loss or damage passes from Datacard to Customer upon delivery of Products to the shipping carrier. Any and all software provided by Datacard shall at all times be and remain the exclusive property of Datacard with Customer receiving only a license to use software in accordance with the accompanying documentation. Nothing in this Agreement gives rise to a bailment relationship between the parties and it is understood by all parties that, upon delivery of Products to the shipping carrier, Datacard (i) is not entitled to direct the disposition of the Products (ii) cannot rescind the transaction; (iii) cannot prohibit Customer from moving, selling, or otherwise using the Products in the ordinary course of business; and (iv) has no other rights that would normally rest with a titleholder, as opposed to the holder of a lien under the U.S. Uniform Commercial Code with respect to the Products.

Warranties. Datacard makes no warranties with respect to the Deliverables other than those, if any, set forth in the documentation delivered by Datacard with the Products or Services, which warranties are subject to the limitations set forth in this paragraph. With respect to equipment and supplies, Datacard warrants only that the goods are free from defects in material and workmanship during the applicable time period set forth in the accompanying warranty documentation. With respect to software, Datacard warrants only that the software will perform in accordance with Datacard's published specifications during the applicable time period set forth in the accompanying warranty documentation. Both in respect of the warranties given expressly by Datacard, and in respect of any implied warranties that, by law, cannot be excluded, Datacard's obligations in the event of a breach of such warranties is limited at Datacard's option (a) in respect of any goods supplied by Datacard to repairing or replacing the goods at no charge to Customer, or the payment of the cost of repairing or replacing such goods; or (b) in respect of any services, the supplying, at no cost to the Customer, of those services again or the payment

of the cost of supplying those services again. The Customer agrees that any rights it has to enforce the express warranties given by Datacard under this Agreement are conditional on (i) Customer's proper use, maintenance, management and supervision of the goods, (ii) the use with the equipment of supplies or consumable materials supplied by Datacard, (iii) a suitable operating environment for the goods; and (iv) the absence of any intentional or negligent act or other cause external to the goods affecting their operability or performance. Any maintenance services undertaken as a result of Customer's failure to comply with these conditions will be charged at Datacard's then-current time and materials rates. Any such warranty will be null and void if, without the prior written approval of Datacard, which approval will not be unreasonably withheld, there shall be any maintenance performed on the Product other than by Datacard or other qualified party which is approved by Datacard, or any addition to, removal from or modification of the Product is made without Datacard's approval. All parts replaced under warranty will become the property of Datacard. Customer will be responsible for the cost of all requested maintenance service provided for the Products by Datacard, which is not covered pursuant to the stated warranty. To the extent that the Deliverables are purchased by the Customer for business or commercial purposes, the *Consumer Guarantees Act 1993* will not apply.

DISCLAIMER OF WARRANTIES/LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS SPECIFICALLY STATED IN THIS DOCUMENT OR IN WARRANTY DOCUMENTATION SET FORTH IN THE ORDER, ATTACHMENTS, OR DOCUMENTATION DELIVERED WITH THE PRODUCTS OR SERVICES, DATACARD HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS AND IMPLIED, WITH REGARD TO THE PRODUCTS AND SERVICES PROVIDED TO CUSTOMER, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT SHALL DATACARD BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR RELATED TO, THE FURNISHING OF PRODUCTS OR PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, UNDER ANY THEORY OF LAW, EVEN IF DATACARD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DATACARD'S AGGREGATE LIABILITY TO CUSTOMER FOR DAMAGES ARISING OUT OF, OR RELATED TO, THE FURNISHING OF PRODUCTS OR PERFORMANCE OF SERVICES UNDER THIS AGREEMENT, UNDER ANY THEORY OF LAW, EXCEED THE SUM OF ALL PAYMENTS MADE TO DATACARD BY CUSTOMER HEREUNDER UP TO THE TIME THE CAUSE AROSE.

Intellectual Property Indemnity. Datacard shall defend, at its expense, any action brought against Customer to the extent that it is based upon a claim that the Product(s), or any part thereof, infringes any letters patent, copyrights, or trade secret rights, and Datacard shall pay those costs and damages finally awarded against Customer which are attributable to such claim, but Datacard's assumption of such defence and payments is conditioned upon the following: (a) that Datacard shall be notified immediately in writing by Customer of any knowledge or notice Customer has concerning such action or related claim, or the possibility thereof, (b) that Datacard shall have the sole control of the defence of any action on such claim and all negotiations for its settlement, and (c) that should the Product, or any part thereof, become, or in Datacard's opinion be likely to become, the subject of a claim of infringement of any letters patent, copyright, trade secret or other proprietary right, Customer shall permit Datacard, at its sole option and expense, (i) to procure for Customer the right to continue using the Product, (ii) to replace or modify the same with new or rehabilitated Product so that the Product becomes non-infringing, or if Datacard is unable to reasonably perform either alternative (i) or (ii), then at the sole option of Datacard, (iii) to remove the Product after giving Customer thirty days prior written notice and reimburse Customer for the reasonable value of the Product at that time consistent with its age and overall condition. Such removal shall be at Datacard's expense.

Datacard shall have no liability to Customer under any provisions of this section with respect to any claim, judgment or finding of patent, copyright or trade secret or other proprietary right infringement which is based upon: (a) the combination or utilization of the Product with equipment, supplies or devices not furnished by Datacard; (b) "method patent" infringement, with the exception of infringement arising from Datacard's own method patent; (c) use of the Product in any manner that is inconsistent with the purpose for which the Product was designed; (d) use of the Product in a manner inconsistent with the explicit provisions in Datacard's documentation for that Product (e) the relocation of the Product to a location other than that in which it was installed without Datacard's prior written approval; (f) modification of the Product in any manner without Datacard's explicit prior written approval, for such modification; or (g) the use in conjunction with the Product of devices, supplies or software provided by Customer.

THE FOREGOING STATES THE ENTIRE LIABILITY OF DATACARD WITH RESPECT TO INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADE SECRETS OR OTHER PROPRIETARY RIGHTS ARISING OUT OF OR BASED UPON THE SALE OR USE OF THE PRODUCTS AND DATACARD SHALL HAVE NO OTHER LIABILITY OR OBLIGATION TO CUSTOMER OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, LOST BUSINESS OPPORTUNITY, LOST PROFIT, LOST EFFICIENCY, REPLACEMENT COSTS OR OTHER CONSEQUENTIAL OR INDIRECT LOSSES OR DAMAGES.

Customer's Indemnification. Customer agrees to defend and indemnify Datacard from and against any and all claims, charges, suits, damages, and expenses of every kind and nature whatsoever, including attorneys' fees and expenses, arising out of or based upon its use or operation of the Deliverables or other activities related thereto.

Independent Contractor. Datacard is acting hereunder as an independent contractor and shall have sole supervision of and responsibility for its authorized maintenance personnel.

Personnel. Customer acknowledges that Datacard has specially trained personnel who perform services hereunder and agrees that during the term hereof Customer will not solicit or otherwise attempt to employ any such Datacard employee without the prior written consent of Datacard.

Force Majeure. In no event shall Datacard be responsible for delays in performance when the same are the result of any cause beyond Datacard's control, including but not limited to fires, floods, strikes or other labour disputes, accidents to machinery, acts of sabotage, riots, precedents or priorities granted at the request or for the benefit, directly or indirectly, of any government or any subdivision or agency thereof, delay in transportation or lack of transportation facilities, or restrictions imposed by governmental rule or regulation.

Entire Agreement; Amendments. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior, contemporaneous or subsequent oral agreements and/or writings. This

Agreement may only be modified in writing by mutual consent of the authorized representatives of the parties. Purchase orders and other documents provided by Customer or Datacard prior to, concurrently with or subsequent to the execution of this Agreement, notwithstanding any statements to the contrary contained in those documents, shall not amend the terms of this Agreement, and Datacard's delivery of any Products or Services against them shall not constitute acceptance of any terms printed on them. Any request by Datacard for or reference to a purchase order or purchase order number is for administrative purposes only and shall not be construed as incorporating into this Agreement any terms or conditions contained in such purchase order.

Assignment. Datacard may assign any or all of its rights or delegate any or all of its obligations under this Agreement without the consent of Customer. Customer may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Datacard.

Waiver. The observance of any term of this Agreement may be waived only by the party benefited by such term. Any such waiver shall be limited to the particular circumstance or event and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof. The failure of either party at any time to require the performance by the other of any of the terms or provisions hereof or the waiver by one party of any of the provisions hereof shall in no way affect the right of that party thereafter to enforce the same.

Governing Law. This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this Agreement.

General. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the remaining provisions shall nevertheless be given full force and effect. Captions used herein are for convenience only and shall not be deemed a part of this Agreement nor used to construe any of its provisions. All notices specified in this Agreement shall be in writing and sent by registered mail to the address of the party as set forth on the first page of this document.