

Datek Solutions Ltd  
**Account Application Form**

Attn .....  
 (Please insert the name of your Datek account manager)

Tel: 01753 540000 Fax: 01753 540001 www.datek.co.uk accounts2@datek.co.uk

**COMPANY DETAILS – Please complete in Block Capitals**

Business / Company Name : ..... Tel No : ..... Fax No:.....  
 Trading Address : ..... Invoice Address: ..... Accounts Contact: .....  
 .....  
 Post Code..... Accounts Email.....  
 Nature Of Business :..... Years of Trading :..... Monthly Credit Required: .....

**IF YOU ARE A LIMITED COMPANY**

Registered Office Address : .....  
 .....  
 Company Reg No : .....  
 Name of Parent Company : .....  
 Registration No : .....

**IF YOU ARE NOT LIMITED**

Name Of Proprietor/Partners in Full:  
 .....  
 Home Address(es) :.....  
 .....  
 Tel No: .....

**BANK DETAILS**

Bank: .....  
 Branch : .....  
 Address:.....  
 .....  
 PostCode:.....  
 Sort Code.....  
 A/C No:.....  
 A/C Name:.....

**TRADE REFERENCE 1**

Name : .....  
 Address : .....  
 .....  
 PostCode: .....  
 Tel No: .....  
 Fax No: .....  
 Contact: .....  
 Credit Limit: .....

**TRADE REFERENCE 2**

Name : .....  
 Address : .....  
 .....  
 PostCode: .....  
 Tel No: .....  
 Fax No: .....  
 Contact: .....  
 Credit Limit: .....

**TRADE REFERENCE 3**

Name : .....  
 Address : .....  
 .....  
 PostCode: .....  
 Tel No: .....  
 Fax No: .....  
 Contact: .....  
 Credit Limit: .....

**TRADE REFERENCE 4**

Name : .....  
 Address : .....  
 .....  
 PostCode: .....  
 Tel No: .....  
 Fax No: .....  
 Contact: .....  
 Credit Limit: .....

**TO BE COMPLETED BY A DIRECTOR, PARTNER OR PROPRIETOR ONLY**

I/we hereby confirm that I/we have read and agree to abide by the Company's Terms & Conditions of Sale (copy available on request). By signing this form, I/We also consent to Datek Solutions Ltd seeking references from our bankers and our trade references listed above.

Name:..... Position:.....  
 Signature:..... Date:.....

**Check List:**

- 4x Trade Reference
- 1x Copy of your Letter Headed Paper
- 1x Signed This Form.
- 1x Faxed it back to us.

*Please note that completion of this form does not constitute acceptance of your application.*

**PLEASE COMPLETE & FAX BACK THIS PAGE ONLY TO DATEK ON +44 (0)1753 540001  
 ALONG WITH A COPY OF YOUR COMPANY LETTER HEADED PAPER**

## Terms & Conditions

### 1. Definitions and Interpretation

1.1 In these terms and conditions the following words have the meanings given: -

"Business Day" means any day other than a Saturday, Sunday or a public or bank holiday in England, Wales, Scotland or Northern Ireland;

"Contract" means a contract for the purchase by the Customer of Products or Services from DATEK SOLUTIONS LIMITED incorporating these terms and conditions and arising from the acceptance by DATEK SOLUTIONS LIMITED of an Order;

"Customer" means the person, firm or company ordering Products or Services;

"Default" shall mean any breach by either party of its obligations under a Contract, any default, act, omission, negligence or statement by either party, its employees, agents or sub-contractors arising out of or in connection with a Contract and in respect of which either party may be legally liable;

DATEK SOLUTIONS LIMITED means DATEK SOLUTIONS Ltd or any such other company as DATEK SOLUTIONS Ltd may appoint as sub-contractor to provide the Services to the Customer;

"Group" means in relation to any party that company and every other company which is for the time being a subsidiary or holding company (as defined in the Companies Act 1985) of that company or a subsidiary of such holding company;

"Intellectual Property Rights" means copyright, patent, trademark, service marks, registered designs, know-how, confidential information, trade or business names or other similar rights together with applications for any of the foregoing;

"Licence Agreement" means any licence agreement relating to use of the Software;

"Order" means any written order for Products, or Products and Services, received by DATEK SOLUTIONS LIMITED from the Customer;

"Services" means any configuration or installation services provided by DATEK SOLUTIONS LIMITED as sub-contractor of the Customer to end-users of Products in conjunction with the supply of Products;

"Software" means any computer software supplied by DATEK SOLUTIONS LIMITED, whether embodied in ROM, RAM, and firmware or on disk, tape or other media.

"Confidential Information" all information of whatsoever nature (whether oral, written or in any other form) containing or consisting of material of a technical, operational, administrative, economic, marketing, planning, business or financial nature or in the nature of intellectual property of any kind or in the nature of Specifications and relating either to the Products, the Seller or the Buyer (as the case may be);

"Delivery Address" the address for delivery of the Products as stated on the Purchase Order;

"Price" the price payable for the Products as specified in the Purchase Order and payable in accordance with the terms of this Agreement;

"Products" such products to be sold by the Seller to the Buyer as may be determined from time to time by the Seller and Buyer;

"Purchase Order" the buyers purchase order for the Products;

"Specifications" any plans, drawings, data or other information relating to the Products;

1.2 All other words and expressions are to be given their normal English meaning taken in the context of the Contract. Any dispute as to the meaning of a word is to be settled by reference to the Oxford English Dictionary.

1.3 Any reference to a clause shall mean a clause of these terms and conditions unless otherwise stated.

1.4 The use of headings in these terms and conditions shall be for convenience only and shall not affect the interpretation of these terms and conditions.

1.5 Reference to any statute or statutory provision or any other regulation includes any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

### 2. Contract Formation

2.1 All Orders submitted by the Customer to DATEK SOLUTIONS LIMITED and accepted by DATEK SOLUTIONS LIMITED shall be subject to these following terms and conditions of which shall form part of and govern any Contract.

2.2 Acceptance by the Customer of any estimate or quotation for Products and/or Services issued by DATEK SOLUTIONS LIMITED shall be deemed to be acceptance of these terms and conditions.

2.3 Any terms and conditions appearing in any Order or other document whatsoever issued by the Customer shall be void and of no effect and these terms and conditions shall override any previous agreements relating to the provision of Products or Services between the parties.

2.4 No waiver of or amendment to these terms and conditions shall be effective unless made in writing and signed by a director of DATEK SOLUTIONS LIMITED. Purported amendments by e-mail or telephone will not be effective.

2.5 The Contract contains the entire agreement of the parties in relation to the supply of Products or Services by DATEK SOLUTIONS LIMITED to the Customer and the Customer irrevocably waives any right it might have to claim for damages and/or to rescind a Contract because of any misrepresentation by DATEK SOLUTIONS LIMITED (unless such misrepresentation was made fraudulently) or any warranty not contained in the Contract.

### 3. Price

3.1 All prices for Products or Services stated in any quote, estimate or acceptance of order is that current at the time of the Customer's enquiry.

3.2 The price payable by the Customer for Products or Services will be the price as quoted in the Purchase Order and unless otherwise agreed in writing will be:

(a) Exclusive of Value Added Tax or other applicable sales tax whether in substitution or in addition that shall be paid by the Customer at the rate from time to time in force.

(b) Exclusive of DATEK SOLUTIONS LIMITED's charges for delivery, handling or Services which will be added to DATEK SOLUTIONS LIMITED's invoice for the Products.

3.3 DATEK SOLUTIONS LIMITED shall not be entitled to increase the Price (whether on account of increased material, labour or otherwise) without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.

3.4 DATEK SOLUTIONS LIMITED will not increase the price of any product after acceptance of the order where the product is available from stock, irrespective of any price changes from the manufacturer.

### 4. Payment

4.1 DATEK SOLUTIONS LIMITED may at its discretion offer credit terms to the Customer subject to the status of the Customer and completion by the Customer of a credit application form supplied by DATEK SOLUTIONS LIMITED. Such credit terms shall be determined by DATEK SOLUTIONS LIMITED and confirmed in writing with the Customer.

4.2 Unless and until credit terms are granted, the Customer will pay for any Products or Services on a "cash with order" basis in which case the Customer should allow at least three (3) Business Days for the payment to be credited to DATEK SOLUTIONS LIMITED's account. DATEK SOLUTIONS LIMITED reserves the right not to release any Products or provide any Services until all such payments are cleared and credited to DATEK SOLUTIONS LIMITED's bank account.

4.3 Where credit terms are granted, and unless other terms are granted in writing, the Customer will pay no later than 30 days following the date of DATEK SOLUTIONS LIMITED's invoice and DATEK SOLUTIONS LIMITED reserves the right to suspend deliveries where payment is delayed.

4.4 Where Credit terms are granted, no amendments will be effective unless made in writing by the Credit Manager. Purported Amendments by e-mail or telephone will not be effective.

4.5 If Products are delivered in instalments DATEK SOLUTIONS LIMITED reserves the right to invoice each instalment as and when delivery is made to the Customer in which case payment shall be due in accordance with clause 4.2 or 4.3 above notwithstanding non-delivery of other instalments or fulfilment of the entire order.

4.6 If any payments are overdue the Customer may be placed on credit hold and no further Products or Services will be delivered or made available to the Customer until all payments due to DATEK SOLUTIONS LIMITED under the Contract have been paid. DATEK SOLUTIONS LIMITED may at its discretion, withdraw credit facilities in the event of any breach of this contract by the Customer.

4.7 If payment is not received by the relevant due date DATEK SOLUTIONS LIMITED may

(1) Charge the Customer interest on any overdue amount (on a daily basis) from the due date of payment to the date of actual payment (both dates inclusive) at the rate of four (4) per cent per annum above the Bank of England Base Rate for the time being in force.

(2) Take legal action for the recovery of any amount due and interest thereon at the rate specified in clause 4.7(2) above together with costs payable on a Solicitor and own Client basis.

4.8 All payments made by the Customer to DATEK SOLUTIONS LIMITED shall be in sterling in immediately available funds free and clear of any right of set off or counter claim or any withholding or deduction whatsoever.

4.9 Only a director of the company may agree terms of payment whereby the Customer may defer payment to DATEK SOLUTIONS LIMITED until receipt of monies from a third party.

4.10 Any agreement in 4.9 must be in writing, prepared before and referred to in the Customer's Purchase Order and will not constitute a guarantee of performance to the Customer of any third party.

4.11 The customer agrees to make all payments due under this contract irrespective of any dispute or claim the Customer may have with or against any third party

## 5. Title

5.1 Risk of damage to or loss of the Products shall pass to the Customer upon delivery to the address specified in the Purchase Order in accordance with Clause 6.

5.2 Full legal, beneficial and equitable title to and property in any Products shall remain vested in DATEK SOLUTIONS LIMITED (even though they have been delivered and risk has passed to the Customer) until:

(i) Payment in full of the purchase price (together with any interest and VAT thereon) and in cleared funds has been received by DATEK SOLUTIONS LIMITED in respect of those Products; and

(ii) All other amounts payable by the Customer to DATEK SOLUTIONS LIMITED have been received by DATEK SOLUTIONS LIMITED.

5.3 Title to and property in Products will remain with DATEK SOLUTIONS LIMITED notwithstanding that the relevant Products have been incorporated in or affixed to other products including, for the avoidance of doubt, the storage of or incorporation of any Software in ROM, RAM or any other hardware, software or firmware or other media whatsoever.

5.4 Until full legal, beneficial and equitable title to and property in any Products passes to the Customer,

(a) The Customer shall hold the Products on a fiduciary basis as DATEK SOLUTIONS LIMITED's bailee

(b) The Customer will store those Products delivered to its premises in a proper manner and condition which adequately protects and preserves the products and shall insure them, without any charge to DATEK SOLUTIONS LIMITED and not tamper with any identification upon the products or their packaging and shall ensure that they are stored separately from any other goods (whether or not supplied by DATEK SOLUTIONS LIMITED) and are clearly identifiable as belonging to DATEK SOLUTIONS LIMITED and DATEK SOLUTIONS LIMITED shall be entitled to examine any such Products in storage at any time during normal business hours upon giving the Customer reasonable notice to do so.

(c) DATEK SOLUTIONS LIMITED may at any time, on demand and with prior notice, require the Customer to deliver the Products up to DATEK SOLUTIONS LIMITED and may repossess and resell the Products if any of the events specified in Clause 15 occurs or if any sum due to DATEK SOLUTIONS LIMITED from the Customer under this contract is not paid when due.

5.5 If the Customer fails to redeliver any Product on demand in accordance with clause 5.3, DATEK SOLUTIONS LIMITED shall be entitled with notice, without incurring any liability to the Customer, to enter the Customer's premises for the purpose of taking possession of the Product, and to take such steps as are necessary to remove the Product including the right to dismantle any product into which the Product has been incorporated and the right to detach the Product from any other goods to which the Product has been attached, provided that this can be done without damaging any product into which it has been incorporated.

5.6 The Customer shall fully indemnify DATEK SOLUTIONS LIMITED in respect of all DATEK SOLUTIONS LIMITED's costs (including legal costs) in connection with enforcing the provisions of clause 5.5.

5.7 DATEK SOLUTIONS LIMITED hereby authorises the Customer to use and/or sell the Products in the normal course of the Customer's business and to pass good title in the Products to its customers, if they are purchasers in good faith without notice of DATEK SOLUTIONS LIMITED's rights. This right shall automatically cease on the occurrence of any event set out in Clause 15 and/or if any sum owed to DATEK SOLUTIONS LIMITED by the Customer is not paid when due. If the Customer sells the Product prior to paying the full price thereof the Customer shall hold the proceeds of sale on trust for DATEK SOLUTIONS LIMITED.

5.8 Where a Product is sold or otherwise disposed of to a third party before title to and property in it has passed to the Customer, the sale will constitute a sale by the Customer of DATEK SOLUTIONS LIMITED's property, and the Customer shall hold on trust for DATEK SOLUTIONS LIMITED such sum as represents, or is equivalent to, the price at which the Product concerned was invoiced by DATEK SOLUTIONS LIMITED to the Customer.

5.9 On termination under Clause 15.1(a) or (b) or upon the Customer entering into a voluntary arrangement, if the Customer has not received the proceeds of any such sale or disposition, it will, if required by DATEK SOLUTIONS LIMITED, assign to DATEK SOLUTIONS LIMITED forthwith all rights against the person, firm or company by whom the proceeds are owed, identify the person, firm or company and provide all relevant information relating to the transaction with the third party.

## 6. Delivery

6.1 DATEK SOLUTIONS LIMITED shall use its reasonable endeavour to deliver Products by the date stated upon the relevant acceptance of any Order but failure to do so shall not constitute a breach of this contract.

6.2 Any dates quoted or mentioned by DATEK SOLUTIONS LIMITED for delivery of the Products or the provision of the Services whether verbally or otherwise are estimates only and whilst DATEK SOLUTIONS LIMITED will use all reasonable endeavours to meet such dates it cannot guarantee to do so.

6.3 Time will not be of the essence in the delivery of the Products or the performance of the Services.

6.4 DATEK SOLUTIONS LIMITED shall deliver the Products to such address or addresses as notified by the Customer to DATEK SOLUTIONS LIMITED for each order, subject to prior agreement with the Customer. DATEK SOLUTIONS LIMITED shall be entitled to make partial deliveries of the Products or deliveries of the same by instalments. A signed delivery note shall be satisfactory proof that delivery has taken place.

6.5 Notwithstanding clause 5 above, the risk in any Product shall pass to the Customer on delivery of the same to the Customer at the address given by the Customer to deliver the Products.

6.6 All illustrations or specifications contained in any catalogues or publicity material produced by DATEK SOLUTIONS LIMITED are approximate only and are only intended to convey a general idea of the Products or Services.

6.7 DATEK SOLUTIONS LIMITED will accept no liability for non-delivery of, loss of or damage to any Products occurring prior to the delivery of the same to the Customer and no claim that the Products are not in accordance with the Contract will be accepted by DATEK SOLUTIONS LIMITED unless claims to that effect are notified in writing to DATEK SOLUTIONS LIMITED (with a copy to DATEK SOLUTIONS LIMITED's carrier in the case of non-delivery, loss or damage):

(a) Within two days of delivery in the case of loss, damage, or non-compliance with the Contract; or

(b) Within two days of receipt of DATEK SOLUTIONS LIMITED's invoice in the case of non-delivery.

6.8 In the event of a valid claim by the Customer under clause 6.7, DATEK SOLUTIONS LIMITED will at its option replace or repair the Product at its own expense but will be under no other liability to the Customer with respect to such claim whether in contract or in tort. All Products (or any part) replaced by DATEK SOLUTIONS LIMITED will become DATEK SOLUTIONS LIMITED's property upon replacement.

6.9 If the Customer fails to give notice in accordance with clause 6.7, it will be deemed to have accepted the Products, the Products will be deemed to be in accordance with the Contract and the Customer will be bound to pay for the same.

## 7. Services

7.1 Where the Customer requires DATEK SOLUTIONS LIMITED to carry out any configuration or installation services as defined in clause 1.1 herein either for the Customer and or the end-user DATEK SOLUTIONS LIMITED shall do so as sub-contractor to the Customer and this agreement and the terms contained herein shall constitute the sub-contract.

7.2 DATEK SOLUTIONS LIMITED will use all reasonable endeavours to provide the Services in accordance with the terms of the Contract and will ensure that the Services will be provided with all reasonable care and skill and by suitably trained and qualified persons.

7.3 If the Services are to be provided according to a time table ("the Timetable") DATEK SOLUTIONS LIMITED shall use all reasonable endeavours to adhere to the timetable in providing the Services but, save as stated herein, time shall not be of the essence in the provision of the Services.

## 8. Cancellation and Return

Upon receipt of a contract (Purchase order) for products or services the contract will be deemed as non-cancellable unless prior written agreement has been met. If the customer wishes to cancel this contract at any time prior to the delivery of goods and services, DATEK SOLUTIONS LIMITED will enforce a 20% restock fee. This fee will be invoiced to the customer and will be paid under the customer's normal credit terms.

You are entitled to request a return of any goods for any reason within 5 working days from their receipt. Any damaged goods must be notified to us verbally (and in writing via e-mail or fax) within two working days of receipt. Any items found damaged after this time will not be accepted back for a return. As well as a full refund, Datek Solutions will also refund any relevant consequential loss involved such as posting or delivery charges if the products are found to be faulty, sold incorrectly or otherwise not fit for their intended purpose. If you are returning a faulty item, first establish whether or not the good(s) are in fact faulty. It may well be that the item works perfectly well but does not tie in with your system correctly due to a configuration or set up problem. If you are unsure about any of this, please contact us and we can pass on the relevant manufacturers details.

If the goods are definitely faulty or if they have been shipped in error, you need to complete the returns form.

Once we have received and validated your form, you will be contacted and issued with a returns number (RMA number). This normally takes 1-2 business days but can take longer if any details on the form have been omitted. RMA numbers cannot be issued without our knowledge of the relevant serial numbers, invoice numbers and dates involved. Note that once issued, RMA numbers will only remain valid for a period of 10 working days. If goods are not returned within this period, the return will be closed. The Company must receive the completed RMA form back within 48 working hours from time of send. As soon as you have been issued with an RMA number, you can arrange for the goods to be returned to us. Datek Solutions cannot accept responsibility for damages caused in transit so please ensure that:

The item(s) are properly packaged. Ensure that you use the original packaging and ensure that the products are wrapped securely to avoid movement/damage in transit. Items not packaged with a reasonable amount of care will be rejected.

No labels, stickers or any parts have been removed.

The goods have not been defaced, altered, manhandled or subjected to any other form of intentional or careless damage.

All supplied contents; inner and outer packaging, manuals, documentation and accessories must be included.

No writing or markings are made on the packaging as this may affect our ability to accept the goods back.

Goods are inspected by us on arrival and, if appropriate, tested. Where appropriate, replacement item(s) will be shipped. DATEK SOLUTIONS reserve the right to decide whether to issue replacement goods or a credit. Items returned where Datek Solutions have arranged collection, and do not conform to these requirements, will be charged according to any damage incurred. Datek Solutions will only meet shipping costs for returns in the case of an error on our part or in cases where the goods are faulty, sold incorrectly or are not suitable for the purpose for which they are intended.

For account holders, it may be possible to arrange an advanced replacement. If you require replacement goods to be sent to you before we receive the returned items, you will be invoiced at the original sales price and we will quote your original purchase order number on all documentation followed by the reference /R at the end of the PO. Once we receive the returned products, and providing that they comply with the above procedure, we will credit your account with the appropriate sale price.

The return of any products, whether correctly or incorrectly supplied, or whether faulty or damaged, may only be made with our prior authorisation. Any attempts to return products to us without following the procedures described above will be rejected.

## 9. DOA Policy

9.1 Any Products failing within the specified period of either DATEK SOLUTIONS LIMITED's invoice to the Customer or the Customer's invoice to their customer shall be returned to DATEK SOLUTIONS LIMITED within 10 days of the date of advising the return to DATEK SOLUTIONS LIMITED, at the Seller's expense, for full credit to the Customer, subject to the product not having become discontinued as defined by the manufacturer.

9.2 The specified period in 9.1 will be

(a) 30 days for all products

9.3 Products not returned within 10 days of notification will not be credited

9.4 All products must be returned with their original packaging.

9.5 On acceptance of the returned product, a credit note will be issued by DATEK SOLUTIONS LIMITED to the Customer for 100% of the value originally invoiced.

9.6 Unless otherwise agreed, this clause does not apply to Laptop computers with cracked or damaged screens.

## 10. Warranties

10.1 DATEK SOLUTIONS LIMITED, to the extent that it is permitted to do so, hereby assigns the benefit of any guarantee or warranty covering any defects in Products received by DATEK SOLUTIONS LIMITED under an agreement with the manufacturer or supplier of the relevant Product.

10.2 The warranty services (if any) will be that provided by the manufacturer and any validation procedures relating to that warranty service are the responsibility of the Customer.

10.3 DATEK SOLUTIONS LIMITED may in its discretion offer support or maintenance services with respect to Products.

10.4 The warranty of the manufacturer or supplier is in lieu of all other terms or conditions whether express or implied concerning the quality or fitness for purpose of Products and all such other terms and conditions are hereby excluded.

10.5 If any services are provided by DATEK SOLUTIONS LIMITED, DATEK SOLUTIONS LIMITED warrants that the Services will be carried out with reasonable care and skill and by suitably trained and qualified persons.

## 11. Year 2000

11.1 DATEK SOLUTIONS LIMITED undertakes that it will use all reasonable endeavours to obtain from the original manufacturer of the Products a warranty that the Products are Year 2000 Compliant, and to the extent that it is able, DATEK SOLUTIONS LIMITED will transfer to the Customer the benefit of any such warranty. For the purposes of this clause "Year 2000 Compliant" means that neither the performance nor the functionality of the Products shall in any way be affected by any date whether before, at or after 1st January 2000, that the Products shall in any way be affected by any date whether before, at or after 1st January 2000, that the Products will be capable of correctly processing all dates and that Year 2000 will be recognised as a leap year.

11.2 DATEK SOLUTIONS LIMITED will in no circumstances be liable to the Customer for any losses, claims or damages of whatever nature that the Customer may suffer as a result of the Products not being Year 2000 Compliant.

11.3 All other express or implied warranties or conditions relating to quality or fitness for purposes (whether implied by statute or otherwise) are hereby excluded in so far as they might apply in the event of the Products not being Year 2000 Compliant.

## 12. Liability

12.1 DATEK SOLUTIONS LIMITED will accept liability without limitation for death or personal injury caused by the negligence of DATEK SOLUTIONS LIMITED (and for any fraudulent misrepresentation).

12.2 The maximum liability of DATEK SOLUTIONS LIMITED whether in contract, tort or otherwise for any direct physical damage to tangible property of the Customer caused by a Default by DATEK SOLUTIONS LIMITED shall be limited to the lesser of £50,000 per incident or series of incidents or an amount equal to the sums paid by the Customer under the Contract during the preceding 6 months.

12.3 The maximum aggregate liability of DATEK SOLUTIONS LIMITED to the Customer whether in contract, tort or otherwise for any direct loss or damage (other than to tangible property) suffered by the Customer as a result of any Default of DATEK SOLUTIONS LIMITED shall be limited in aggregate to the lesser of £25,000 or an amount equal to the sums paid by the Customer under the Contract during the preceding 12 months.

12.4 DATEK SOLUTIONS LIMITED shall not be liable to the Customer whether in contract, tort or otherwise and even if foreseeable by or in the contemplation of DATEK SOLUTIONS LIMITED for: -

(a) Any loss of profits, business, revenue, goodwill, data or anticipated savings, whether sustained by the Customer or any other person; or

(b) Any special, indirect, or consequential loss whether sustained by the Customer or any other person.

12.5 Any advice or recommendations given to the Customer by DATEK SOLUTIONS LIMITED or its employees or agents as to storage, application, use or preference of the goods which is not confirmed in writing by DATEK SOLUTIONS LIMITED, is followed or acted upon entirely at the Customer's own risk and accordingly DATEK SOLUTIONS LIMITED shall not be liable for any such advice or recommendation which is not so confirmed.

### 13. Intellectual Property Rights

13.1 All Intellectual Property Rights in or relation to the Products (including any manuals and operating documentation relating thereto) or in any materials (including Software) created by DATEK SOLUTIONS LIMITED during the course of providing the Services shall vest in DATEK SOLUTIONS LIMITED or its suppliers as the case may be and the Customer shall have no title to or interest in any such Intellectual Property Rights except to the extent specifically agreed by DATEK SOLUTIONS LIMITED.

13.2 The Customer will notify DATEK SOLUTIONS LIMITED immediately if it becomes aware of any illegal or unauthorised use of any of the Products or any of the Intellectual Property Rights in the Products and will assist DATEK SOLUTIONS LIMITED and/or its suppliers in taking all steps necessary to defend the owners' rights.

13.3 The Customer undertakes to ensure that any Software which is sold to end-users or any other third party will be accompanied by any Licence Agreement (whether shrink-wrap or otherwise) relating to that Software and any other documentation which DATEK SOLUTIONS LIMITED or DATEK SOLUTIONS LIMITED's suppliers may require.

13.4 Unless specifically authorised under a Licence Agreement, the Customer undertakes that it shall not (and that it shall not employ nor permit any third party) attempt to copy, adapt, amend, disassemble, de-compile or reverse engineer Software or any part thereof except to the extent allowed by English law.

### 14. Confidentiality

14.1 Each party shall treat as confidential all information obtained from the other which is specifically designated as confidential or proprietary and shall not divulge such information to any person (except to such party's own employees and then only to those employees who need to know the same) without the other party's prior written consent.

14.2 This clause shall not extend to any information which was rightfully in the possession of a party prior to the commencement of the negotiations leading to a Contract, which is already public knowledge or becomes so at a future date (otherwise as a result of a breach of the clause) or which is trivial or obvious.

14.3 Each party shall ensure that its employees are aware of and comply with the provisions of this clause.

14.4 This clause shall apply for a period of 2 years following any termination of this contract

### 15. Termination

15.1 Without prejudice to any other rights or remedies DATEK SOLUTIONS LIMITED might have against the Customer DATEK SOLUTIONS LIMITED may terminate a Contract or suspend the performance of its obligations under a Contract forthwith by notice in writing to the Customer if: -

(a) The Customer defaults in making payment for any of the Products or Services supplied by DATEK SOLUTIONS LIMITED within seven days of its due date; or

(b) The Customer defaults in any of its obligations under these terms or a Contract; or

(c) The Customer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Defaulting Party; or

(d) The Customer is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 be unable to pay his debts or any steps are taken to wind up the Customer, or an administrator, administrative receiver or receiver is appointed over the Customer's business or any part of its assets.

15.2 Upon termination of a Contract under clause 15.1, DATEK SOLUTIONS LIMITED shall have the right, without prejudice to any other right or remedy available, to enter the Customer's premises and repossess the Product or any of them and shall have the right to dismantle any machinery, product, item or equipment into which the Product or any of them have been incorporated and the Customer shall be responsible for all DATEK SOLUTIONS LIMITED's costs and expenses in connection with so doing.

15.3 Those clauses capable of surviving termination shall do so.

### 16. Variations

16.1 DATEK SOLUTIONS LIMITED reserves the right to modify these terms and conditions upon notice in writing to the Customer. Any such modification will apply on the effective date specified in the said notice to all Orders, which are accepted by DATEK SOLUTIONS LIMITED on or after the date of notice. The Customer shall have thirty days from the date of notice within which to cancel any Order sent to DATEK SOLUTIONS LIMITED prior to the date of notice and not accepted by DATEK SOLUTIONS LIMITED at that date.

### 17. Assignment

17.1 The Customer shall not assign or otherwise transfer any of its rights or obligations under a Contract whether in whole or in part without the prior written consent of DATEK SOLUTIONS LIMITED, which shall not be unreasonably withheld.

### 18. Personnel

18.1 The Customer acknowledges that DATEK SOLUTIONS LIMITED has incurred significant costs in recruitment and training its employees to enable them to provide the Services. Accordingly the Customer agrees that it will not, and it will ensure that no other company within its Group will not, solicit or approach in any way, any of DATEK SOLUTIONS LIMITED's employees who are involved in the provision of the Services with a view to offering them employment or to solicit services from them on their own account (whether for the Customer or another party) during the period of the Contract and for a period of six (6) months after termination or expiration of the Contract.

18.2 The Customer acknowledges that damages will not be an adequate remedy for DATEK SOLUTIONS LIMITED if the Customer breaches clause 7.1 and that DATEK SOLUTIONS LIMITED will be entitled to seek injunctive relief and any other equitable remedies with respect to such breach.

18.3 If any employee of DATEK SOLUTIONS LIMITED leaves the employment of DATEK SOLUTIONS LIMITED as a result of a breach by the Customer of clause 18.1 and commences employment with, or provision of services to, the Customer or any other member of the Customer's Group it shall pay DATEK SOLUTIONS LIMITED 50% of the higher of: -

(a) The annual salary (including any benefits-in-kind, bonus payments, commissions and other emoluments) of the employee at the date that they ceased to be an employee of DATEK SOLUTIONS LIMITED; and

(b) The annual salary of the employee at the time they commence employment by the Customer or other member of the Customer's Group and the Customer acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of DATEK SOLUTIONS LIMITED's losses.

#### 19. Invalidity

19.1 If any provisions, or portions thereof, of a Contract are held to be invalid and unenforceable under any applicable statute or rule of law, they are to that extent to be deemed omitted and the validity and/or enforceability of the remaining provisions of the Contract shall not be impaired or affected by that omission.

#### 20. Force Majeure

20.1 Neither DATEK SOLUTIONS LIMITED nor the Customer shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Products, if the delay or failure is beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control: -

20.1.1 Act of God, explosion, flood, tempest, fire or accident

20.1.2 war, sabotage, insurrection, civil disturbance or requisition;

20.1.3 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

20.1.4 import or export regulations or embargoes;

20.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party);

20.1.6 power failure or breakdown in machinery.

#### 21. Notices

21.1 All notices that are required to be given hereunder shall be in writing and shall be sent to the registered address of the party in question.

#### 22. Export Control

22.1 The Customer acknowledges that certain Products may be subject to export controls imposed by United Kingdom or other Governments and undertakes to apply for and obtain any necessary licences or other consents that may be necessary to export or take any product (or any part thereof) out of the United Kingdom.

#### 23. Law

23.1 All Contracts shall be governed by, and construed in accordance with, English law and the parties submit to the exclusive jurisdiction of the English courts.

#### 24. Waiver

24.1 The waiver by either party of a breach or default of any of the provisions on this Agreement by either party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder operate as a waiver of any breach or default by either party.

#### 25. Rights of Third Parties

25.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract. No person who is not a party to this Contract (including any employee, officer, agent, representative or subcontractor of either party) shall have the right (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any term of this Contract which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this clause.

Please note the following regarding Data Protection Act 1998.

We may transfer information about you to our bankers/financiers for the purposes of providing services for the following:

- Obtaining credit insurance
- Making credit reference agency searches
- Credit control
- Assessment and analysis, including credit scoring, product and statistical analysis.
- Securitisation
- Protecting our interests

We will provide you with details of our bankers/financiers and that of any credit reference agencies used on request.