

The terms and conditions detailed in this document ("Agreement") apply to your ("Customer") purchase from DAP of DAP hardware ("Hardware"), licenses to use DAP software ("Software") (collectively the "Product(s)"), as well as DAP Hardware and Software Services and support ("Services").

DAP means the DapTechnology B.V. affiliate identified on the Quote, order acknowledgement, or invoice, or in the absence of an identified DapTechnology affiliate, then DapTechnology B.V.. This agreement shall apply unless Customer and DAP have entered into a separate signed agreement applicable to the purchase of products and services. By placing an order with DAP, Customer agrees to be bound by the terms of this Agreement. DAP hereby objects to and rejects any additional or different terms proposed by Customer, including those contained in Customer's purchase order, unless DAP expressly agrees to such terms in writing. If you do not agree with these terms, immediately notify DAP and return the products unused and in its original packaging to DAP.

## **1 PRICES AND ORDERS:**

DAP communicates pricing to Customer in various ways (e.g., quotes) and confirms transaction prices with its order acknowledgements. All quotes expire thirty (30) days from date of issuance, unless otherwise stated in the Quote. All orders are subject to acceptance at the sole discretion of DAP. Orders will be considered accepted once DAP books an order and sends Customer a sales order acknowledgement. DAP shall not be bound by changes to an order unless agreed by DAP in writing. DAP reserves the right to cancel any order if any information provided by Customer to DAP is inaccurate.

## **2 PAYMENT AND INVOICING:**

Payment is due at the time the order is placed. If Customer is approved for credit, payment shall be due within thirty (30) days from the date of invoice ("Invoice Date"). Payment shall be in the currency listed on the DAP invoice. All sums not paid when due shall accrue interest daily at a monthly rate of the lesser of 1.5% or the highest rate permissible by law. If there are multiple units in an order, each unit will be invoiced when shipped.

## **3 DELIVERY, TITLE and RISK OF LOSS:**

Unless DAP notifies Customer otherwise, shipments will be delivered FCA (Incoterms 2010) DAP's point of shipment. Risk of loss or damage will pass to Customer upon DAP's delivery to the DAP designated shipping point. Any subsequent loss or damage will not relieve Customer from its obligations. Title and risk of loss to Products (for Software, the media) shall pass to Customer upon shipment from DAP, its warehouses, or its affiliated companies; provided however, DAP retains a security interest and right of possession in the Products until Customer makes payment in full. For orders to be delivered within the same country as the DAP entity accepting the order, DAP will arrange the shipping; however, Customer is responsible for all shipping and handling fees set forth in the invoice. If Customer chooses to arrange for shipping or if the order is placed with an DAP entity outside the country of the applicable shipping destination, Customer is responsible for all shipping and

handling, including fees, customs, formalities and clearance. Shipment dates provided by DAP are estimates only, and DAP shall have no liability for losses or claims resulting from late delivery of Products. Claims for shipment shortage shall be deemed waived unless presented to DAP in writing within forty-five (45) days of Invoice Date.

#### **4 TAXES:**

Prices exclude any sales, use, service, value added, and like taxes ("Taxes") arising from the purchase of the Products and Services. Customer is solely responsible for paying all applicable taxes and duties. DAP will add sales taxes to the sales price where required by applicable law and Customer will pay such taxes unless Customer provides DAP with a duly executed sales tax exemption certificate and the time the order is placed by Customer.

Unless DAP notifies Customer otherwise, with regard to international shipments that transit through international waters or airspace, title transfers to Customer immediately after Products leave the jurisdictional territory of DAP's point of shipment. Unless DAP notifies Customer otherwise, with regard to domestic shipments and international shipments that do not transit through international waters or airspace, title transfers upon delivery to Customer's carrier or nominee at DAP's point of shipment.

#### **5 SOFTWARE:**

Software is licensed pursuant to the software license agreements provided with the software or, in the absence of such license agreements, the DapTechnology Software License Agreement available at [daptechnology.com/legal](http://daptechnology.com/legal) at the time of purchase. All software is licensed, not sold, and title to the software remains with the applicable licensor(s).

#### **6 NON-DAP BRANDED PRODUCTS:**

Non-DAP Branded Products that DAP resells may not be testable or repairable by DAP, and it may be necessary for Customer to contact the manufacturer or the publisher for service. DAP does not warrant, has no obligation to support, and shall have no liability for Non-DAP Branded Products. The Limited Warranty and Dap Intellectual Property Liability sections of this Agreement do not apply to the sale and purchase of Non-DAP Branded Products. "Non-DAP Branded Product(s)" means any third-party hardware, software, or service that DAP sells, but does not carry an DAP mark.

#### **7 SERVICES:**

Services provided by DAP are also subject to any service agreements or statements of work agreed upon in writing by the parties or, as applicable, to the DAP service terms and conditions.

#### **8 RETURN POLICY:**

Customer may return standard Products within thirty (30) days of the Invoice Date. DAP reserves the right to charge Customer a twenty five percent (25%) restocking fee for any Products returned to DAP. No returns will be accepted after the thirty (30) day period has expired. A Return Material Authorization (RMA) number is

required for Customer to return any Products. Acceptance of returns of customized Products and Non-DAP Branded Products is in the sole discretion of DAP.

## **9 LIMITED WARRANTY:**

For a period of three (3) years from the Invoice Date, DAP warrants to Customer that its Hardware will be free of defects in materials and workmanship that cause the Hardware to fail to substantially conform to the applicable DAP published specifications. For a period of ninety (90) days from the Invoice Date, DAP warrants that the Software (i) will perform substantially in accordance with the applicable documentation provided with the Software and (ii) the Software media will be free from defects in materials and workmanship. DAP warrants that the Services will be performed in a good and workmanlike manner.

If DAP receives notice of a defect or non-conformance during the applicable warranty period, DAP will, in its discretion: (i) repair or replace the affected Hardware or Software, (ii) re-perform the affected Services, or (iii) refund the fees paid for the affected Hardware, Software or Services. Repaired or replaced Hardware or Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. If DAP elects to repair or replace Hardware, DAP may use new or refurbished parts or products that are equivalent to new in performance and reliability and are at least functionally equivalent to the original part or Hardware. Customer must obtain an RMA number from DAP before returning any Hardware under warranty to DAP. Customer will pay shipping expenses to send the affected Hardware to DAP, and DAP will pay shipping expenses to return the Hardware to the Customer.

If DAP concludes, after examining and testing returned Hardware, that it is not covered by the Limited Warranty, DAP will notify Customer and return the Hardware at Customer's expense. DAP reserves the right to charge a fee for examining and testing Hardware not covered by the Limited Warranty. This Limited Warranty does not apply if the defect of the Hardware or Software resulted from improper or inadequate maintenance, installation, repair, or calibration (performed by a party other than Dap); unauthorized modification; improper environment; use of an improper hardware or software key; improper use or operation outside of the specification for the Hardware or Software; improper voltages; accident, abuse, or neglect; or a hazard such as lightning, flood, or other act of nature.

## **10 NO OTHER WARRANTIES:**

Except as set forth above, products defined in this agreement are provided "as is" and "with all faults". DAP disclaims all warranties, express or implied, regarding such products, including but limited to, any epidemic failure warranty or implied warranties of merchantability or fitness for a particular purpose.

## **11 WARNING AND CUSTOMERCUSTOMER INDEMNITY:**

Customer understands and acknowledges that products are not designed, manufactured, or tested for use in life and safety critical systems, hazardous environments or any other environments requiring fail-safe performance, including the operation of nuclear facilities, aircraft navigation, air traffic control systems, lifesaving or life sustaining systems or such other medical devices, or any other application in which the failure of the product or service could lead to death, personal injury, severe property damage or environmental harm. Further, Customer must take prudent steps to protect against product and service failures, including providing back-up and shut-down mechanisms. DAP expressly disclaims any express or implied warranty of fitness of the product or services for high-risk uses.

Customer shall defend, indemnify, and hold Dap harmless from any and all claims, losses damages, actions (including lawsuits, arbitrations, and/or administrative actions) and expenses (including reasonable attorneys' fees) arising out of the Customer's use of the product and services for any high-risk use, including claims for product liability, regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of DAP.

## **12 SYSTEM AND APPLICATION RESPONSIBILITY AND ADDITIONAL INDEMNITY:**

Customer acknowledges that it is ultimately responsible for verifying and validating the suitability and reliability of the products and services whenever the products or services are incorporated in its system or applications, including the appropriate design process, and safety level of such system or application. Further, Customer must take prudent steps to protect against product and service failures, including providing back-up and shut-down mechanisms. DAP expressly disclaims any express or implied warranty of fitness of the product or services for high-risk uses. Customer shall defend, indemnify, and hold Dap harmless from any and all claims, losses damages, actions (including lawsuits, arbitrations, and/or administrative actions) and expenses (including reasonable attorneys' fees) arising out of the Customer's incorporation of the products or services into its system or application, regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of DAP.

## **13 INTELLECTUAL PROPERTY LIABILITY:**

DAP agrees to defend any third-party claim that alleges the Hardware, Software or Services infringe international patent, copyright, or trademark ("Claim"). Customer shall notify DAP immediately upon learning of any Claim, or any allegation that the grounds for a Claim may exist, shall grant DAP sole control over the defense and settlement of the Claim, and shall cooperate fully with DAP in preparing a defense for any Claim. DAP agrees to pay any final judgment or settlement resulting from any Claim, provided that the settlement is entered into in accordance with this Section. DAP shall not be liable for a settlement made without its prior written consent.

Notwithstanding the foregoing, DAP shall have no obligation under this Section for any claim relating to or arising from;

- a. Customer's modifications of Hardware, Software or Services;
- b. failure to use Hardware, Software or Services in accordance with the applicable documentation provided by DAP;
- c. the combination, operation, or use of Hardware, Software or Services with any hardware, software or service not provided by DAP;
- d. the compliance of DAP with Customer's specifications or directions, including the incorporation of any software or other materials provided by or requested by Customer,
- e. Non-DAP Branded Products.

The foregoing states the Customer's sole remedy for, and the entire liability and responsibility of DAP for, infringement of any patent, trademark, or copyright or other intellectual property rights. This limited indemnity is in lieu of any other statutory or implied warranty against infringement.

In any event, if DAP believes in its reasonable opinion the Hardware, Software, or Services may be alleged to be infringing, for the purposes of mitigating any potential damages, DAP may, at its option, (i) procure for the Customer the right to continue to use the Hardware, Software, or Services; (ii) replace them with comparable

Hardware, Software or Services that are free of such infringement; or (iii) refund the fees paid by Customer, in which case Customer shall promptly return the Hardware to DAP and/or terminate the use of the Software or Services.

#### **14 PROPRIETARY RIGHTS:**

DAP reserves all right, title, and interest in any intellectual property rights contained or embodied in Products, or resulting from the Services, including any custom developments created or provided by DAP under this Agreement. Nothing in this Agreement will be deemed to grant to Customer any ownership rights in such intellectual property.

#### **15 LIMITATION OF LIABILITY:**

DAP shall not be liable for:

- (I) Special, indirect incidental, punitive, exemplary, or consequential damages arising out of or in connection with this agreement or the products and services
- (II) Any damages arising out of or in connection with:
  - a. Products or services not being available for use, including any cost of obtaining substitute products or services,
  - b. Loss of, corruption of, or loss of use of any products hardware, software or data,
  - c. Loss of revenue, profit or business opportunity,
  - d. Business interruption or downtime,
  - e. Inability to achieve a particular result, even if it is at a suggestion made by DAP.

To the extent permitted by applicable law, the total liability of DAP arising out of or in connection with this agreement or the products and services, shall not exceed the amount of the fees paid by the Customer for the specific product and service giving rise to such claims. This section

- (1) Applies to DAP and its licensors, distributors, and suppliers (including its and their directors, officers, employees and agents,
- (2) Reflects and allocation of risk between Dap and Customer in view of the purchase price of the products and services,
- (3) Applies even if DAP has been advised of the possibility of damages and regardless of whether such claims are founded in whole or in part upon alleged or actual negligence of DAP,
- (4) Regardless of whether such damages are based in contract, warranty, strict liability, negligence tort, or otherwise.

To the extent the foregoing limitation of liability is unenforceable or fails of its essential purpose, the sole liability of DAP to Customer shall be limited to \$10,000 (USD).

#### **16 FORCE MAJEURE:**

DAP shall not be responsible for any delay or failure to perform due to any cause beyond its reasonable control, including but not limited to acts of nature or governments; interruptions of telecommunications, power or transportation; failure of contractors or suppliers; or inability to obtain necessary labor or materials ("Force Majeure Event"). In the event of a Force Majeure Event, DAP reserves the right to cancel the applicable order without any liability to Customer.

## **17 EXPORT AND SANCTIONS LAWS AND COMPLIANCE:**

Products (which, for purposes of this Section, shall include the software and technology incorporated in or supplied with a Product and Service) purchased from DAP are subject to control under the U.S. Export Administration Regulations (15 CFR Part 730 et. seq.) administered by the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") ([www.bis.doc.gov](http://www.bis.doc.gov)) and other applicable U.S. export control laws and sanctions regulations, including those administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") ([www.treas.gov/ofac](http://www.treas.gov/ofac)). In addition, Products distributed from DAP's distribution center in Europe are subject to control under the European Union ("EU") Council Regulation No. 428/2009 and their export or intra-EU transfer may also be subject to additional licensing requirements under European Union Council Regulation No. 428/2009 and its implementing regulations. Products may not be exported or re-exported to any country where sanctions are imposed by the U.S. government (which currently includes Cuba, Iran, North Korea, Republic of Sudan and Syria but which may be modified by the U.S. government from time to time). Customer agrees it will comply with the export laws and trade sanctions of all applicable countries and will not export, re-export or transfer Products purchased from DAP without the required license(s), including an export or re-export license issued by the U.S. authorities, or to any prohibited destination or for a prohibited end-use. Products may also require export license(s) issued by the applicable authorities before being returned to DAP. The issuance of a Quote, a sales order acknowledgment, or an RMA by DAP is not an export license. Customer represents and warrants it is not ineligible or otherwise restricted by U.S. or applicable law to receive Products and it will not export, re-export, or provide Products to any person or entity on OFAC's List of Specially Designated Nationals or on BIS's Denied Persons List, Entity List or Unverified List or any other applicable restricted party list. DAP reserves the right to refuse and/or cancel any order if, at any time, DAP believes that any export controls or trade sanctions laws may be violated.

## **18 GOVERNING LAW:**

This Agreement shall be governed by the laws of the Netherlands without regard to principles of conflicts of laws. The parties submit to the personal jurisdiction of the state and federal courts in the Netherlands. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Products will not apply to this Agreement.

## **19 U.S. GOVERNMENT CONTRACTS:**

If Customer intends to use Products in the performance of a U.S. Government contract or subcontract where Federal Acquisition Regulations, Defense Federal Acquisition Regulations Supplements, or other applicable government procurement rules or regulations (collectively, "Government Procurement Regulations") will apply, Customer will inform DAP in writing of each applicable Government Procurement Regulation before Customer submits an applicable purchase order for the Product. Unless otherwise agreed upon in writing and signed by DAP,

- a. no Government Procurement Regulations will apply,
- b. DAP will not provide certified cost or pricing data,
- c. Cost Accounting Standards, Defective Pricing, and Audit requirements will not apply.

**20 LIMITATION PERIOD:**

Dap shall not be liable for any claim arising under this agreement brought more than two years after the cause of the action for such claim first arose.

**21 UPDATES:**

DAP reserves the right to update this Agreement at any time, effective upon posting an updated version at [daptechnology.com/legal/](http://daptechnology.com/legal/); however, the terms and conditions in effect at the time of purchase shall apply to that purchase of Products or Services.

**22 ASSIGNMENT AND THIRD PARTY BENEFICIARIES:**

This contract is not assignable by Customer without DAP's prior written consent. Any unauthorized assignment is null and void. No provision in this contract confers any benefits, rights, or remedies to any person other than Customer or DAP. DAP's affiliates and subsidiaries may perform all or any part of DAP's obligations under this contract.

**23 GENERAL TERMS:**

This Agreement, and any terms incorporated herein by reference, constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings or agreements, whether written or oral, with respect to that subject matter. Customer acknowledges reading this Agreement, understands these terms, and agrees to be bound by them. This Agreement may not be altered, supplemented, or amended by the use of any other document unless otherwise agreed in writing by DAP. No delay or failure by DAP to exercise any right it has under this Agreement shall impair or be construed as a waiver of such right. A waiver of any provision of this Agreement must be in writing and shall not be construed as a waiver or modification of any other term hereof, or as a continuing waiver of any provision. The term 'including' as used in the Agreement should be construed as 'including without limitation'. If any part, term, or provision of this Agreement is held illegal, unenforceable, or in conflict with any applicable and enforceable law, the validity of the remaining portions or provisions of this Agreement shall not be affected. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the parties with respect to this Agreement.