

# Datel Advansys Limited Supply Agreement (November 2023 Edition)

Datel Advansys Limited is a supplier of Equipment, Software and Services, which are provided subject to the terms of this Agreement. This Agreement comprises these Conditions and the relevant Proposal/ Quote. If there is any conflict between any of the documents, then the following order of priority shall apply:

1. The Conditions; and
2. The Proposal/Quote, as applicable.

## The Conditions:

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in the Agreement.

<b>Conditions;</b>	these conditions.
<b>Confidential Information;</b>	information belonging to or relating to a party's business affairs or activities which (i) has been labelled as such or identified as confidential information or (ii) may reasonably be deemed to be confidential in the circumstance of its disclosure or use.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures;</b>	as defined in the Data Protection Legislation.
<b>Customer;</b>	The Customer whose details are contained in the Proposal/Quote.
<b>Data Protection Legislation;</b>	means: (a) to the extent that the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; or (b) to the extent that the EU GDPR applies, the law of the European Union or any member state of the European Union to which either party are subject which relates to the protection of personal data.
<b>Datel Advansys;</b>	Datel Advansys Limited, company number 06899831.
<b>Equipment;</b>	The equipment to be supplied by Datel Advansys to the Customer as detailed in the Proposal and/or any order issued by Datel Advansys to the Customer.
<b>EU GDPR;</b>	the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.
<b>Fees;</b>	The fees payable by the Customer to Datel Advansys under this Agreement for the Equipment, Software and/or Services (as applicable), as set out in the relevant Proposal / Quote.
<b>Intellectual Property Rights;</b>	all patents, copyright and related rights, trade marks, business names, rights in get up and goodwill, the right to use for passing off, rights in designs, database rights, rights to use and protect the confidentiality of Confidential Information (including know-how) and all other intellectual property rights, registered or unregistered, which subsist now or in the future in any part of the world.
<b>Proposal;</b>	The proposal prepared by Datel Advansys, on behalf and based on information supplied by the Customer for the supply of Equipment, Software and/or Services to a Customer.
<b>Quote;</b>	A quotation prepared by Datel Advansys setting out details of the Equipment, Software and/or Services to be supplied.
<b>Services;</b>	The services which may be supplied by Datel Advansys to the Customer in connection with supply of Equipment and/or Software, which shall be as specified in the Proposal/Quote.
<b>Software;</b>	The third party software licences to be arranged by Datel Advansys on behalf of the Customer as detailed in the Proposal Quote, subject always to the Customer complying with the provisions of this Agreement, and specifically clause 7.
<b>UK GDPR;</b>	has the meaning given to it in Section 3(1) (as supplemented by Section 205(4)) of the Data Protection Act 2018.
<b>Vendor Terms;</b>	The third party licence terms applicable to the Software, with which the Customer is required to comply.
<b>Working Day;</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Working Hours;</b>	9.00 am to 5.30 pm local UK time, each Working Day.

1.2 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of the Agreement. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of the Agreement under that statute or statutory provision.

### 2. BASIS OF CONTRACT

- 2.1 By confirming in writing it wishes to proceed with a Proposal / Quote the Customer confirms it agrees these Conditions (without amendment).
- 2.2 Any samples, drawings, descriptive matter or advertising issued by Datel Advansys and any descriptions of the Equipment, Software and/or Services contained in Datel Advansys' marketing literature or on its website are issued or published for the sole purpose of giving an approximate idea of the Software, Services and/or Equipment described in them. They shall not form part of the Agreement or have any contractual force.
- 2.3 These Conditions apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 Any Quote given by Datel Advansys shall not constitute an offer, and is only valid for a period of 30 days (or such other period as may be specified in the Quote) from its date of issue.
- 2.5 All of these Conditions shall apply to the supply of the Equipment, Software and/or Services (where applicable) except where otherwise is specified.

### 3. EQUIPMENT AND SOFTWARE

3.1 The Equipment and Software to be made available to the Customer shall be as described in the Proposal/Quote.

### 4. DELIVERY OF EQUIPMENT

- 4.1 Datel Advansys shall deliver the Equipment as specified in the relevant Proposal/Quote.
- 4.2 Datel Advansys shall facilitate delivery of the Equipment to the location set out in the relevant Proposal/Quote or such other location as the parties may agree (**Delivery Location**).
- 4.3 Delivery of the Equipment shall be completed on arrival of the Equipment at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. Datel Advansys is not liable for any delays with delivery that are caused by a force majeure event or due to the Customer failing to provide Datel Advansys with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

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- 4.5 It is the Customer's responsibility to arrange installation of the Equipment, unless Datel Advansys agree in writing to install the Equipment on behalf of the Customer. Any such agreement will be recorded in the Proposal/Quote.
- 4.6 Datel Advansys may deliver the Equipment by instalments, which shall be invoiced and paid for in accordance with the terms set out in the Proposal/Quote. Each instalment shall form part of this Agreement. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel the Agreement or any other instalment.
- 5. QUALITY OF EQUIPMENT**
- 5.1 Datel Advansys confirms that on delivery the Equipment shall:
- 5.1.1 conform in all material respects with any description in the Proposal/Quote;
  - 5.1.2 be free from material defects in design, material and workmanship; and
  - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 To the extent that there is any manufacturer's guarantee or warranty attached to the Equipment, Datel Advansys shall endeavour pass the benefit of such manufacturer's guarantee or warranty to the Customer, where it is possible to do so. If an extended warranty is included with the Equipment this shall be specified in the Proposal/Quote.
- 5.3 Subject to clause 5.4, if:
- 5.3.1 the Customer gives notice in writing within a reasonable time after delivery, that some or all of the Equipment does not comply with the warranty set out in clause 5.1;
  - 5.3.2 Datel Advansys is given a reasonable opportunity of examining such Equipment; and
  - 5.3.3 Datel Advansys confirms the issue is covered under warranty; and
  - 5.3.4 the Customer (if asked to do so by Datel Advansys) returns such Equipment to Datel Advansys' place of business at the Customer's cost, Datel Advansys shall, at its option, repair or replace the defective Equipment.
- 5.4 Datel Advansys shall not be liable for the Equipment's failure to comply with clause 5.1 if:
- 5.4.1 the Customer continues to use such Equipment after giving a notice in accordance with clause 5.3.1;
  - 5.4.2 the defect occurs because the Customer has not followed Datel Advansys' instructions relating to storage, installation, use or maintenance of the Equipment or (if there are none) good trade practice;
  - 5.4.3 the defect arises because Datel Advansys has followed any drawing, design or specification supplied by the Customer;
  - 5.4.4 the Customer alters or repairs such Equipment, without the written consent of Datel Advansys;
  - 5.4.5 the defect arises due to fair wear and tear, wilful damage, negligence, or abnormal working conditions;
  - 5.4.6 the Equipment differs from its description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.5 Except as provided in this clause 5, Datel Advansys shall have no liability to the Customer in respect of the Equipment's failure to comply clause 5.1.
- 5.6 These Conditions shall apply to any repaired or replacement Equipment supplied by Datel Advansys under clause 5.3.
- 6. TITLE AND RISK**
- 6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.
- 6.2 Title to the Equipment shall pass to the Customer when payment of the Fees for the Equipment has been made in full in cleared funds to the bank account directed by Datel Advansys or on delivery to the Customer, whichever is later.
- 6.3 Until payment for the Equipment has been received, and title to the Equipment has passed to the Customer, the Customer shall:
- 6.3.1 Only use the Equipment for its own internal purposes and any other purposes agreed in writing by the parties;
  - 6.3.2 Keep the Equipment in a good and safe condition;
  - 6.3.3 not sell, sub-licence, rent, hire, tamper, interfere or intentionally or recklessly damage the Equipment;
  - 6.3.4 not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - 6.3.5 keep the Equipment fully insured against all risks for their full replacement price on Datel Advansys' behalf from the date of delivery;
  - 6.3.6 notify Datel Advansys immediately if it becomes subject to any of the events listed in clause [15.2.2 to clause 15.2.4]; and
  - 6.3.7 give Datel Advansys such information relating to the Equipment as Datel Advansys may require from time to time and on request, during normal working hours, give Datel Advansys access to the Equipment so that Datel Advansys can verify that the Equipment is being used in accordance with this clause 6.3.
- 6.4 Until payment for the Equipment has been received, and title to the Equipment has passed to the Customer, if the Customer becomes subject to any of the events listed in clause [15.2.2 to clause 15.2.4], then, without limiting any other right or remedy Datel Advansys may have:
- 6.4.1 the Customer's right to use the Equipment in the ordinary course of its business ceases immediately; and
  - 6.4.2 Datel Advansys may at any time:
    - 6.4.2.1 require the Customer to deliver up all Equipment in its possession; and
    - 6.4.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.
- 7. SOFTWARE**
- 7.1 The Customer understands that it may purchase Software on a subscription basis or on a perpetual licence basis. Where applicable, the Proposal/Quote shall specify whether the Software is acquired on a subscription or perpetual licence basis. This clause outlines the terms which apply to a subscription and perpetual licence respectively.
- 7.2 SUBSCRIPTION – This clause 7.2 shall apply to Software in respect of which the Customer has purchased a subscription to use the Software.** In consideration of the Customer paying the applicable Fees, Datel Advansys shall procure that the vendor of the applicable Software shall grant the Customer, subject to clause 7.4, a non-exclusive, non-transferable licence to use the relevant Software for the duration of the Customer's subscription. For the avoidance of doubt, nothing in this clause 7.2 shall operate to transfer any Intellectual Property Rights in the Software to the Customer. Updates to the relevant Software are included in the Customer's subscription but support services are not included, unless expressly agreed otherwise in writing with Datel Advansys.
- 7.3 PERPETUAL LICENCE – This clause 7.3 shall only apply to Software in respect of which the Customer has purchased a perpetual licence to use the Software.** In consideration of the Customer paying the applicable Fees, Datel Advansys shall procure that the vendor of the applicable Software shall grant to the Customer, subject to clause 7.4, a non-exclusive, non-transferable perpetual licence to use the relevant Software for its own business purposes. For the avoidance of doubt, nothing in this clause shall operate to transfer any Intellectual Property Rights in the Software to the Customer. The perpetual licence does not include updates to the relevant software or support services in respect of the Software unless expressly agreed otherwise in writing with Datel Advansys.
- 7.4 SUBSCRIPTION AND PERPETUAL LICENCE CONDITIONS – The following conditions shall apply to the Customer irrespective of whether it has taken a subscription to use the Software or a perpetual licence to use the Software:**

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- 7.4.1 Except as permitted by clauses 7.1 or 7.2, the Customer agrees that it:
- 7.4.1.1 will not sell, assign, lease, rent, loan, transmit, network or otherwise distribute or make available the Software in any manner to third parties without Datel Advansys' prior written consent;
  - 7.4.1.2 will use the Software for its own business purposes only;
  - 7.4.1.3 will take steps to keep the Software secure and safeguard it from theft or from access by unauthorised persons;
  - 7.4.1.4 shall not (and shall not permit any third party to) reverse engineer, decompile or disassemble, the Software; and
  - 7.4.1.5 shall indemnify Datel Advansys against any loss or damage it may suffer as a result of the Customer's breach of this clause 7.4.
- 7.4.2 The Customer shall be granted a licence to use the Software subject to the relevant Vendor Terms, which shall be made available to the Customer on request.
- 7.4.3 The Customer will permit Datel Advansys to audit the Customer's use of the Software in order for Datel Advansys to check that the Customer is complying with the terms of the licence, this Agreement and the Vendor Terms. Such access shall be subject to any conditions or restrictions which the Customer may reasonably place on Datel Advansys and shall occur during hours in which the relevant premises are normally available for such access.

### 8. SERVICES

Where applicable Datel Advansys shall provide the Services in a professional manner, using reasonable skill and care and in accordance with good industry practice.

### 9. CUSTOMER OBLIGATIONS

#### 9.1 Customer shall:

- 9.1.1 Co-operate with Datel Advansys and provide Datel Advansys with any information reasonably required in order to supply the Equipment, Software and/or Services;
- 9.1.2 If necessary, provide Datel Advansys and its employees, agents, consultants and subcontractors, with access to the Customer's premises, so Datel Advansys can deliver the Equipment, Software and/or Services, subject to Datel Advansys complying with any health, safety and security policies and procedures which the Customer notifies to it in advance; and
- 9.1.3 comply with all applicable law when using the Equipment, Software and/or Services.

#### 9.2 If Datel Advansys cannot perform or it is delayed in performing any of its contractual obligations due to the Customer's acts or omissions or a failure by the Customer to perform its contractual obligations (**Default**):

- 9.2.1 without limiting or affecting any other right or remedy available to Datel Advansys, Datel Advansys may suspend supply of the Equipment, Software and/or Services until the Customer remedies the Default, and Datel Advansys can rely on such Default to relieve it from the performance of any of its obligations to the extent the Default prevents or delays Datel Advansys performing any of its obligations;
- 9.2.2 Datel Advansys will not be liable for any costs or losses the Customer suffers or incurs due to Datel Advansys' failure or delay in performing its obligations as set out in this clause; and
- 9.2.3 the Customer will reimburse Datel Advansys on written demand for any costs or losses it suffers or incurs arising as a result of the Default.

### 10. CHARGES AND PAYMENT

- 10.1 Datel Advansys shall invoice the Customer for the Fees in accordance with the Proposal / Quote.
- 10.2 Datel Advansys' invoices are due for payment within thirty (30) days of the date of invoice unless otherwise agreed in writing. If the Customer disputes Datel Advansys' invoice, it must notify Datel Advansys before the invoice is due for payment.
- 10.3 Value added tax shall be added to Datel Advansys' invoices where applicable.
- 10.4 If payment of any undisputed invoice is overdue, Datel Advansys may, at its discretion, charge the Customer interest on such overdue sum under the Late Payment of Commercial Debts (Interest) Act 1998 from the due date of payment until the date of actual payment.

### 11. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges and agrees that Datel Advansys and/or its licensors own all Intellectual Property Rights in the Equipment, Software and/or Services.

### 12. DATA PROTECTION

12.1 It is not expected that personal data will be processed by Datel Advansys in connection with this Agreement. However, should the scope of the Services to be supplied involve any processing of personal data, Datel Advansys shall ensure such processing is carried out in accordance with Data Protection Legislation. Accordingly, both parties will comply with all applicable requirements of the Data Protection Legislation.

### 13. CONFIDENTIALITY

- 13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement. A party's Confidential Information shall not be deemed to include information that:
  - 13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 13.1.2 was in the other party's lawful possession before the disclosure;
  - 13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
  - 13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2 Subject to clauses 13.3 and 13.4, each party shall for the duration of the Agreement and for five (5) years thereafter, hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.
- 13.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.
- 13.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 13.6 Datel Advansys acknowledges that the Customer Data is Confidential Information.

### 14. LIMITATION OF LIABILITY

- 14.1 Except as expressly and specifically provided in the Agreement all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement. Datel Advansys do not warrant that the operation of the Software will be uninterrupted or error free.
- 14.2 Nothing in the Agreement excludes the liability of either party:

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14.2.1 for death or personal injury caused by the other party's negligence; or

14.2.2 for fraud or fraudulent misrepresentation.

14.3 Subject to clause 14.1 and clause 14.2:

14.3.1 Neither party shall be liable to the other, for any special, indirect or consequential losses suffered or incurred by the other due to a breach of the Agreement, which shall include (without limit) loss of profits, loss of business, damage to goodwill or loss or corruption of data; and

14.3.2 Datel Advansys' total aggregate liability to the Customer shall be limited to the Fees paid by the Customer to Datel Advansys for the Equipment, Software and/or Services supplied pursuant to this Agreement.

### 15. TERM AND TERMINATION

15.1 The Agreement shall start on the date it is signed by the parties.

15.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of any other term of the Agreement and (if such breach is capable of remedy) fails to remedy that breach within thirty (30) days of being notified in writing to do so;

15.2.2 the other party suspends, or threatens to suspend, payment of its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; the other party enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction; a resolution is passed in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation or reconstruction; an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given; the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; a creditor or encumbrancer of the other party attaches or takes possession of, or other such process is levied or enforced on or sued against, the other party's assets;

15.2.3 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 15.2.2; or

15.2.4 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.3 On termination of the Agreement for any reason:

15.3.1 Datel Advansys shall cease supplying the Equipment / Software / Services to the Customer and invoice the Customer for all Fees due and/or incurred up to the termination date; and

15.3.2 any rights, remedies, obligations or liabilities that have accrued up to the date of termination shall not be affected or prejudiced; and

15.3.3 any clauses which are intended to remain in effect after the date of termination or expiry, shall remain in full force and effect.

### 16. FORCE MAJEURE

Neither party is responsible for failure to fulfil its obligations hereunder due to causes beyond its reasonable control that directly or indirectly delay or prevent its timely performance hereunder. Dates or times by which each party is required to render performance under the Agreement shall be postponed automatically to the extent that the party is delayed or prevented from meeting them by such causes.

### 17. ASSIGNMENT

Neither party may assign the Agreement or otherwise transfer any rights or obligations under the Agreement except with the other party's prior written consent (such consent not to be unreasonably withheld or delayed).

### 18. ANTI-BRIBERY AND MODERN SLAVERY

Both parties shall:

18.1 comply with all applicable laws and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and

18.2 have and shall maintain in place throughout the term of the Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements.

### 19. GENERAL

19.1 Variation: No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

19.2 Waiver: If a party fails to or delays in exercising a right or remedy provided under the Agreement or by law, this does not mean that party has waived that right or remedy, and shall not be prevented or restricted from exercising that or any other right or remedy in future. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19.3 Severance: If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

19.4 Entire Agreement: The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

19.5 No Partnership or Agency: Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other.

### 20. THIRD PARTY RIGHTS

20.1A

person who is not a party to the Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

### 21. NOTICES

All notices made pursuant to the Agreement must be made in writing (which shall include a notice given by email to a valid email address). Any written notice shall be sent postage prepaid by registered or recorded mail or reputable courier service, addressed to the other party's address stated above (as amended by written notice from time to time) and shall be marked for the attention of "The Directors". Unless otherwise provided in the Agreement, all notices shall be deemed as given on the day of their receipt by the receiving party.

### 22. GOVERNING LAW AND JURISDICTION

The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

END