

# General Terms and Conditions for the Sale of Goods

Dimension Data Czech Republic s.r.o.



01 October 2015

## General Terms and Conditions for the Sale of Goods

### 1. Introductory Provisions

Provisions of these general terms and conditions for the sale of goods (hereinafter the “**Terms and Conditions**”) shall apply to the sale of goods of **Dimension Data Czech Republic s.r.o.**, with its registered office at Na Hřebenech II 1718/10, 140 00 Prague 4, corporate ID: 26175738, recorded in the Register of Companies held by the Municipal Court in Prague, File C, Insert 77064, (hereinafter the “**Seller**”) to its business partners (hereinafter the “**Buyer**”), unless a special contract stipulates otherwise.

### 2. Order and Origination of a Contract

- 2.1 An individual purchase contract (hereinafter the “**Contract**”) shall be concluded based on an order made by the Buyer (hereinafter the “**Order**”). The offer of the Seller (hereinafter the “**Offer**”) and the Order of the Buyer shall include these Terms and Conditions. By placing the Order, the Buyer confirms that he/she read these Terms and Conditions and treats them as part of the Contract concluded between the Buyer and the Seller. By placing the Order, the Buyer additionally agrees that these Terms and Conditions are the only conditions that shall apply to the Contract concluded based on his/her Order. To avoid any doubts, no business or other contractual conditions pre-printed or otherwise listed or appended to the Order of the Buyer shall apply to the Contract (purchase of goods from the Seller).
- 2.2 The Offer of the Seller may, in certain cases, include the *Scope of Work* (hereinafter “**SOW**”) which provides details of the subject of supply of the Seller in accordance with the Contract. SOW shall be equally binding for the supplies of the Seller as other parts of the Offer.
- 2.3 The Order of the Buyer issued based on the Offer of the Seller shall be made in writing and may have the following forms: (i) original copy of the written Order delivered to the Seller, e.g. in a letter or delivered in person, (ii) copy of the original written Order delivered to the Seller by fax, (iii) copy (scan) of the original written Order delivered to the Seller by email, (iv) document in the PDF format which was created in the internal information system of the Buyer, delivered to the Seller as an attachment to an email or via other electronic manner. The Order shall always be (except for (iv) of this paragraph) signed by an authorised representative of the Buyer. The Order issued and placed by the Buyer in such manner shall be treated as binding.
- 2.4 The Order shall contain no less than the following information:
- a) Business name and registered office of the Buyer (place of business in the Czech Republic);
  - b) Contact person, his/her email and telephone number;
  - c) Corporate ID, tax ID, if the Buyer is registered as VAT payer;
  - d) Name and code of the goods which clearly indicate the subject of the Order (number of the goods, i.e. codes of the goods are listed in the up-to-date price list/Offer of the Seller);
  - e) Quantity of required goods;
  - f) Method of delivery of goods;
  - g) Total price of the Order;
  - h) Signature of the authorised representative of the Buyer (and stamp of the company), except for the case listed in 2.3 above.
- The Order of the Buyer shall be treated as sufficient even if it does not contain the information required in letters d), e), f) and g), provided it contains an explicit reference to the valid Offer of the Seller that can be clearly identified with such reference, and if the Offer contains various options of goods, the reference contains the specification which option was selected by the Buyer.
- 2.5 Individual Contracts shall be concluded upon the delivery of the Order to the Seller when the Order fully matches the Offer and does not contain any deviations, amendments, reservations, limitations or other changes as compared to the Offer (Section 1740, par. 3, of the Civil Code, shall not apply and therefore the possibility of receiving the offer with an amendment or deviations shall not be possible).
- 2.6 If the Order contains deviations, amendments, reservations, limitations or other changes as compared to the Offer, such Order shall be treated as a new Offer and shall be binding for the Seller only if the Seller sends a confirmation of the Order to the Buyer in which the Seller shall confirm the delivery of the goods under the conditions listed in the Order, or that the Order of the Buyer was accepted by the Seller even with the changes as compared to the Offer. The confirmation of the Order shall be sent by the Seller to the Buyer by email. In this case, the Contract shall be concluded upon the delivery of the Order confirmation to the Buyer.
- 2.7 If the confirmation of the Order receipt by the Seller is required by the Buyer, the Seller shall confirm the Order without any delays after its receipt by email. However, if the Order fully matched the Offer, the Contract shall be concluded upon the receipt of the Order (refer to paragraph 2.5 above). If the Order does not match the Offer, the procedure listed in paragraph 2.6. above shall always apply.

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- 2.8 For the purposes of the Contract conclusion under these Terms and Conditions, a fax message shall be treated as delivered when the receipt is issued from the machine of the sender on its due sending with faultless result to any contact fax number of the other contractual party listed in the Offer or the Order or otherwise communicated to the other contractual party upon the conclusion of the specific business transaction. For the purposes of the Contract conclusion an email message shall be treated as delivered at the moment of its receipt by an external email server of the other contractual party in accordance with the records from the email system of the contractual party which sent the email, and the email message may be sent to any email address of the other contractual party listed in the Offer or the Order or otherwise communicated upon the conclusion of a specific business transaction to the other contractual party.
- 2.9 The subject of the Contract concluded using the above manner shall be the obligation of the Seller to provide the Buyer with the goods listed in the Offer (or in the confirmation of the Order) and transfer the ownership right to these goods to the Buyer and the obligation of the Buyer to receive the supplied goods and pay for them the agreed purchase price, all in compliance with these Terms and Conditions.
- 3. Electronic Form of Orders made in the E-Shop**
- 3.1 The Seller operates the sale of selected goods in a closed and secured electronic business system - E-Shop.
- 3.2 When using an electronic Order in the E-Shop, the Buyer shall be obliged to use an identification password which shall be allocated by the Seller to the Buyer at his request and which shall be used for the identification of the Buyer. The Buyer shall be obliged to provide for the confidentiality of the password to avoid its use by unauthorised entities and shall bear the responsibility for the misuse of the password.
- 3.3 In the electronic order system in the E-Shop, the Order will be automatically entered in the system operated by the Seller. The system for the receipt of Orders in the electronic form operates continuously.
- 3.4 By placing an electronic Order in the E-Shop, the Buyer shall be bound to it and shall not be authorised to cancel it unilaterally. The Contract shall be concluded upon the delivery of the electronic Order to the Seller. The date of the delivery of goods listed in the electronic Order of the Buyer shall be binding for the Seller only if it is confirmed by the Seller following the receipt of the electronic Order. The confirmation of the date of delivery shall be sent by the Seller to the Buyer by an email. If the date of delivery listed in the electronic Order cannot be met by the Seller, the Seller shall send information regarding a new date of delivery to the Buyer by email, or shall propose a different solution for the delivery of goods to the Buyer. The date which was sent by the Seller to the Buyer in accordance with the previous sentence shall be binding for the Seller.
- 3.5 The electronic form of the Order in the E-Shop shall equal the written form and shall be equally binding for both contractual parties as the written form.
- 4. Place and Date of Delivery**
- 4.1 To determine the date of the supply, the date of the supply listed in the Offer (or confirmation of the Order) shall apply. If no date for the supply is listed, the date of the supply listed in the Order shall apply. If no date is listed in any of these documents, the Seller shall supply the goods to the Buyer in ten (10) weeks from the date of the Contract conclusion. In exceptional cases, the Seller may extend the deadline for the supply, however, in such case, it shall be obliged to inform the Buyer on this fact, within 21 days from the Contract conclusion.
- 4.2 To determine the place of the supply, the place listed in the Offer (or in the confirmation of the Order) shall apply. If the place is not listed, the place listed in the Order shall apply. If the place of the supply is not listed in any of these documents, the place of the supply shall be the registered office of the Buyer. The goods shall be delivered to the Buyer by the standard shipping company.
- 4.3 If the delay in the delivery of the goods is caused by:
- (i) Force majeure; or
  - (ii) Any behaviour, negligence, idleness or another delay of the Buyer; or
  - (iii) Any other event beyond the control of the Seller;
- the deadline for the supply shall be extended by the period agreed by the parties, and this period shall not be shorter than the duration of the event listed above, unless the parties agree otherwise.
- 5. Price and Payment Conditions**
- 5.1 The Buyer undertakes to pay the purchase price for the ordered goods to the Seller. The payment shall be made by bank transfer to the bank account of the Seller pursuant to an issued tax document (invoice) of the Seller.
- 5.2 Prices in the Offers of the Seller are listed net of VAT which shall be added in accordance with applicable regulations, unless the Offer specifically states that the price includes VAT.
- 5.3 The price shall be considered as the business secret of the Seller.

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- 5.4 Unless the Offer (or confirmation of the Order) stipulates otherwise, the invoices shall be payable in fourteen (14) day from the date of issuance, and the Buyer shall be obliged to pay the sum in a manner ensuring that the sum is credited to the bank account of the Seller on the maturity date. If the Buyer is in delay with the payment of the invoice, it undertakes to pay a default interest of 0.1% from the due amount for each day of the delay to the Seller.
- 5.5 The costs of the transportation of the goods from the warehouse of the Seller to the Buyer shall be paid by the Buyer, unless the contractual parties agree otherwise in writing.
- 5.6 In the event of changes in the exchange rate of the currency, for which the Seller buys the goods, to CZK by more than 3% as of the date of the invoicing to the Buyer as compared to the exchange rate on the date when the Offer (or the confirmation of the Order) was sent to the Buyer, the Seller shall be authorised to change the invoiced price in a corresponding manner, if the price is set in CZK. The relevant exchange rate for the calculation of changes is the exchange rate promulgated by the Czech National Bank.
- 6. Delivery and Receipt of Goods**
- 6.1 The receipt of the goods shall be confirmed by an authorised representative of the Buyer by his/her signature on the delivery note.
- 6.2 If the goods specified as for “personal pick-up” is not picked up at the agreed date or if the Buyer does not receive the goods from the shipping company, the Seller shall be authorised to cancel such Order of the goods, by a unilateral notification of cancellation delivered to the Buyer. In the event of the cancellation, the Buyer shall be obliged to pay a contractual fine of 10% of the purchase price of the bindingly ordered, but not received goods, to the Seller.
- 6.3 The Buyer shall be obliged to inspect the goods delivered by the Seller immediately after the receipt of the goods from the Seller and announce any identified defects of the goods to the Seller. If the goods are sent by a shipping company, the Buyer shall be obliged to inspect the goods delivered by the Seller immediately after the receipt from the shipping company. When delivered by the shipping company, the Buyer shall be additionally obliged to inspect the shipment upon the receipt and before the signing of the delivery note. If the information does not match the actual status, or the original packaging is damaged or otherwise destroyed, etc., the Buyer shall be obliged to state this fact in the transport sheet of the shipping company and prepare a record of the damage, or reject the goods as a whole. The Buyer shall be obliged to immediately inform the Seller on this fact, i.e. the record of the damage or rejection of the goods. The Buyer shall be obliged to inspect the factual content of the shipment according to the attached delivery note. If the content of the shipment does not match the delivery note, the Buyer shall be obliged to list the differences in the transportation sheet and let this fact confirm by the shipping company. If the shipping company refuses to do that, the Buyer shall be obliged to reject the supply of the goods as a whole. By signing the summary sheet of the shipping company, the Buyer shall confirm the receipt of all goods that are part of the relevant supply of the goods.
- 6.4 The Buyer shall be obliged to report the defects of the goods to the Seller always without any unnecessary delays, i.e. by no later than two (2) business days from the moment when the Buyer could identify the defect. The defects shall be reported by the Buyer in writing or electronically (by email).
- 7. Other Contractual Conditions**
- 7.1 The Seller reserves the ownership right to the goods and the Buyer consequently acquires the ownership right when 100% of the purchase price is credited to the bank account of the Seller.
- 7.2 The danger of the damage on goods or loss of the goods or theft of the goods shall be transferred to the Buyer upon the delivery of the goods to the place of the supply.
- 7.3 The Seller hereby declares that it adheres to all conditions listed in Act No. 477/2001 Coll., on Packaging, as amended, and the relevant authorisation is available to the Buyer for inspection at the registered office of the Seller.
- 7.4 The Buyer shall not be authorised to further sell or otherwise transfer the ownership rights or other rights (e.g. licences) to the goods to any third party without prior written consent of the Seller.
- 7.5 The Seller shall agree that the delivery of the goods may be used as a public reference with the listed supplies or subject of supplies, trademarks and generally known facts. This consent shall be unlimited in time and shall remain valid after the expiration of the contract. The Seller shall be additionally authorised to list the Buyer in its list of references.
- 8. Liability for Defects and Warranty**
- 8.1 The Seller shall be liable for the defects of the goods that are identified on the goods upon the delivery to the Buyer.
- 8.2 The Seller shall not be liable for the defects if the defect was identified after the delivery to the Buyer and it was identified that (i) the goods had been placed in inappropriate environment; (ii) in operations of the goods, instructions for due operations determined in the documentation to the goods or otherwise provided to the Buyer had not been adhered to;
- (iii) the goods had been used in a manner or for a purpose for which it is not intended; (iv) a third party had interfered with the goods without the prior consent of the Seller, including cases when the goods were altered or repaired by a third party without the prior consent of the Seller; (v) the goods were used in connection with any product (HW or SW) not approved by the Seller; (vi) the defect was caused by



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external effects including inadequate physical force, electricity or air-conditioning outages, accidents, incorrect handling, or force majeure.

8.3 The Buyer shall be obliged to report all defects to the Seller in writing or by email by no later than two (2) business days after the Buyer identified the defect.

8.4 The Seller shall provide the same warranty for the goods supplied in accordance with the contract as the warranty provided by the manufacturer of the goods in the scope when it is possible, from the legal perspective and based on a contractual relationship between the manufacturer of the goods and the Seller, that the Seller assigns such warranty to the Buyer. The Seller shall inform the Buyer on the warranty in the Offer or upon the delivery of the goods. To avoid any doubts, the Seller states that it is not the manufacturer of the goods and does not provide any warranty for the goods (unless the Offer explicitly states otherwise), it primarily does not provide any warranty regarding the satisfactory or standard quality of the goods, or adequacy of the use of the goods for certain purpose, or warranty of non-breaching the rights of third parties in relation to the use of the goods.

### 9. Software and Intellectual Property Rights

9.1 The use of any software the manufacturer/holder of copyright of which is not the Seller and which is supplied to the Buyer in accordance with the contract, shall be governed by licence conditions that are supplied together with the software. The licence agreement for the use of software of third parties shall originate directly between the Buyer and the owner/holder of the copyright to software. All supplied software of third parties shall be listed in the Offer (including SOW).

9.2 If the Offer (including SOW) does not explicitly state that the Seller is the bearer of copyrights to the supplied software, the Seller shall be no party to any licence agreement relating to software and the Seller consequently shall not provide warranties relating to the ownership/authorship, use or operations of such software.

9.3 No rights for the use of trademarks, business names, company logos, patents or other intellectual property rights of the Seller or other companies the goods (products) of which is included in the Offer of the Seller, arise to the Buyer, unless a special contract explicitly stipulates otherwise.

### 10. Liability for Damage

10.1 The obligation of the Seller to compensate any damage caused to the Buyer by the breach of obligations arising from the Contract (including these Terms and Conditions) and from the legislation, shall be limited by the amount of 100% of the price of the goods supplied in accordance with the Contract. This limitation shall also apply to the compensation for immaterial damage that the Seller would be potentially obliged to pay in accordance with the legislation, and damages in special cases in accordance with Section 2920 et seq. of the Civil Code.

10.2 The Seller shall be exempt from the obligation to pay damages and shall not be obliged to pay damages, if it proves that the damage resulted from (a) an extraordinary, unpredictable and insurmountable obstacle independent from the will of the Seller (force majeure event); or (b) behaviour of the Buyer, or another third party beyond the control of the Seller; or (c) insufficient cooperation to which the Buyer was obliged. In addition, the Seller shall not be obliged to pay damages to the Buyer, or any third party, if any of the facts listed in paragraph 8.2. happened.

10.3 The Seller shall not be liable, and therefore shall not have any obligation to provide compensation for  
(i) lost profit, lost income, lost business opportunities, unrealised anticipated savings and/or loss of goodwill, loss of data, or damage to data (ii) any random, subsequent or other indirect damage or losses. This limitation shall apply regardless the form of the exercised claim, whether it is a claim based on the obligation to pay damages as a result of the breach of law or the contract, and regardless the fact whether the Seller was notified of the possibility of such damage or losses.

10.4 The above limitations shall not apply to the liability to (i) compensate for the detriment in the event of a death or injury of a person; or (ii) compensation for the detriment caused deliberately or due to gross negligence; or any other liability to compensate for detriment when the exemption or limitation of this obligation would be invalid or unenforceable in accordance with the law.

10.5 The Buyer and the Seller shall be obliged to mitigate or reduce the impact of any losses, damage, fines, costs, expenses (including the costs of legal representation) or other obligation and liabilities that may arise from any breach of law or contract.

### 11. Force Majeure

11.1 "Force majeure event" shall mean an obstacle that temporarily or permanently prevents one contractual party to meet its obligations arising from the contract and that is extraordinary, unpredictable and unsurmountable and arose independently from the will of any of the parties. The force majeure event includes flood, earthquake, war, terrorist attack, sabotage, revolution, invasion, uprising, strike, track closures or any other event in the operations of a plant, mutiny, civil disorder, mass violence, blockade, embargo, boycott, use of military force, fire, explosion, quarantine, and/or negotiation or restriction from

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- the government, including restrictions or embargos on import and export.
- 11.2 The party affected by the force majeure event shall not be in delay with the meeting of its obligations arising from the Contract or shall not be otherwise liable for any delays with the supplies or for the failure to meet obligations in accordance with the Contract (except for the payments in accordance with the Contract), if the delay in the supplies or failure to meet an obligation arose directly from the force majeure event and provided that
- a) The party affected by the force majeure event announced to the other contractual party in writing and without any undue delays the origination of the force majeure event and likely duration including the impact on the other contractual party;
  - b) The party effected by the force majeure event adopted all reasonable measures to reduce the impact of the force majeure event.
- 11.3 As soon as the force majeure event ends, the party shall immediately notify the other contractual party about the fact that the force majeure event ended and it will renew the meeting of obligation arising from the Contract affected by the force majeure event.
- 11.4 If the force majeure event lasts for more than thirty (30) successive days and the meeting of the obligations arising from the Contract is prevented/delayed, the party which is not affected by the force majeure event (i) shall be authorised to terminate the Contract by a notice in writing which takes effect when the notice is delivered to the other contractual party; and (ii) shall not be obliged to provide compensation for any damage that could arise in this context.
- 12. Termination of the Contract**
- 12.1 The Contract may be terminated by (i) a written agreement of contractual parties, and/or (ii) withdrawal from the contract. The Seller and the Buyer shall be entitled to withdraw from the Contract in cases listed in the Offer (or confirmation of the Order) and in these Terms and Conditions. The possibility to withdraw from the Contract only by the expiry of the additional time limit for supply shall be explicitly ruled out. The withdrawal from the contract shall be always made explicitly by the parties, by a written withdrawal from the Contract.
- 12.2 Contractual parties shall be entitled to withdraw from the contract in the event of a significant breach by the other contractual party under the below conditions, unless these Terms and Conditions stipulate otherwise. Before the withdrawal from the contract, the contractual party which intends to withdraw from the contract, shall be obliged to invite the other contractual party to meet its obligations and provide it with sufficient period that shall not be shorter than fifteen (15) business days. If the contractual party that was in significant breach of the Contract does not meet its obligation even in this additional period, the other contractual party shall be entitled to withdraw from the Contract by written notification. The withdrawal from the Contract shall take effect when the written notification on the withdrawal is delivered to the other contractual party.
- 12.3 A significant breach of the Contract covers the following cases:
- Delay of the Seller in the supply of the goods exceeding 30 days;
  - Supply of the goods with defects that prevent its use and that were not repaired by the Seller in an agreed period;
  - Delay of the Buyer in the payment of the purchase price or its part exceeding 30 days;
  - Delay of the Buyer in the receipt of the goods exceeding 30 days.
- 12.4 If the contractual party is in bankruptcy, or of an insolvency proceedings has been initiated with the contractual party in line with Act No. 182/2006 Coll., on Bankruptcy and Settlement (Insolvency Act), as amended, in liquidation or in receivership, or if it is not able to settle its financial payables, the other contractual party may withdraw from this Contract immediately with effect from the date of delivery of a written notification of withdrawal to the other contractual party.
- 13. Final Provisions**
- 13.1 These Terms and Conditions shall be binding for contractual relationships in the sale of the goods by Dimension Data Czech Republic s.r.o., starting from the date of their promulgation.
- 13.2 If the Buyer does not agree with the wording of these Terms and Conditions (published also in the E-Shop), it shall not be entitled to place an Order of the goods, based on Article 2 of these Terms and Conditions, and not in the E-Shop.
- 13.3 The Contract (including these Terms and Conditions) shall be governed and interpreted by the law of the Czech Republic. In the interpretation of the Contract (including these Terms and Conditions), provisions of the law shall prevail over business conventions in general and in the specific industry.
- 13.4 The parties undertake that they shall exercise maximum effort to achieve amicable solution of any disputes arising from the Contract or in relation to the Contract (including the provisions of these Terms and Conditions). The disputes that cannot be solved in an amicable manner, shall be dealt with by the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber

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- of the Czech Republic. The arbitration tribunal shall be composed of three arbitrators and its arbitration award shall be final and binding. The arbitration proceedings shall take place in Prague, Czech Republic, and shall be held in Czech.
- 13.5 All official announcements, requests or communications between contractual parties relating to the Contract shall be prepared in Czech and sent in a letter signed by an authorised representative of the contractual party or by fax that shall be immediately confirmed by the sent letter. All notifications shall be treated as delivered on the third day after sending, if sent by registered mail to the address of the registered office of the contractual party.
- 13.6 Any changes in the conditions of the Contract (including these Terms and Conditions) shall be made in writing.
- 13.7 None of the contractual parties shall be entitled to assign receivables arising from the Contract concluded in line with these Terms and Conditions, allow debt assumption by a third party, or transfer its rights and obligations arising from the Contract (assign the Contract) without the prior written consent of the other contractual party. Any assignments and transfers made without prior written consent of the other contractual party shall be treated as invalid and ineffective in respect to the other contractual party. This provision shall not be interpreted in a manner that the Seller shall not be entitled to use sub-contractors to meet any of its obligations. The Seller shall be additionally entitled to assign the Contract to another entity in the *Dimension Data* group.
- 13.8 The contractual parties shall agree on a ten-year limitation period for financial payables arising from the Contract in line with Section 630 of the Civil Code.

These Terms and Conditions shall take effect on 1 October 2015.