

TERMS AND CONDITIONS OF SALE AND SERVICE

Datacolor, Inc. is a New Jersey corporation. Datacolor's sale of Products and Services and Datacolor's license of Software to its customers ("Customer") are governed by these Terms and Conditions of Sale and Service (the "Terms"). Except as specified herein, in the event of a conflict between these Terms and a term in any Datacolor quotation or purchase agreement signed by Datacolor, the terms of the quotation or purchase agreement shall govern.

These Terms and any quotations or agreements to which they are attached, together with all exhibits, constitute the entire agreement between Datacolor and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase or license of Products and Services will constitute Customer's acceptance of these Terms, which may not be changed except by an amendment signed by an authorized representative of each party.

1. DEFINITIONS

- "Delivery" means standard Datacolor shipping to and arrival at the receiving area at the "Ship To" address in the country where Customer's order is placed, unless otherwise indicated on the order.
- "Products" means hardware (together with any embedded Software), Software, documentation, accessories, supplies, parts and upgrades that are determined by Datacolor to be available from Datacolor upon receipt of Customer's order.
- "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device"). Software is either a separate Product, included with another Product, or fixed in a Device and not removable in normal operation.
- "Specifications" means specific technical information about Datacolor Products which is published in Datacolor Product manuals and technical data sheets in effect on the date Datacolor ships Customer's order.
- "Services" means hardware maintenance and repair; Software updates and maintenance; training; and other standard Services provided by Datacolor.

2. PRICES

- Prices **DO NOT** include Delivery charges, unless otherwise indicated on the quotation, and are valid for the period indicated on the quotation or for the applicable purchase agreement ordering period, whichever expires first. Prices remain valid for 90 days from the original quote date unless otherwise indicated on the quotation. Change orders that extend Delivery beyond those validity periods become new orders at prices in effect when Datacolor receives the change orders. Services prices may be changed by Datacolor upon 60 days written notice.
- Prices are exclusive of, and Customer will pay, applicable sales, use, service, value added or like taxes, unless Customer has provided Datacolor with an appropriate exemption certificate for the Delivery jurisdiction.

3. ORDERS

- All orders are subject to acceptance by Datacolor. Product orders must specify Delivery within 180 days from order date, unless otherwise agreed or indicated on the quotation.
- Customer will specify Ship To address within the country where the order is placed, unless otherwise agreed.
- Customer may cancel orders for Products prior to shipment or Services prior to performance subject, at Datacolor's option, to a 10% cancellation fee. Customer will pay all charges for returning Products to Datacolor's shipping location if Product orders are cancelled after shipment plus, at Datacolor's option, a restocking fee of up to 25%.

4. DELIVERY

- Datacolor will make reasonable efforts to meet Customer's Delivery requirements. If Datacolor is unable to meet Customer's Delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.

5. SHIPMENT AND RISK OF LOSS

- Datacolor will ship according to Datacolor's standard commercial practice (**EX-Work**), and risk of loss and damage will pass to Customer at Datacolor's plant. If special packing or shipping instructions are agreed, charges will be billed separately to Customer, and risk of loss and damage will pass to Customer on delivery to Customer's carrier.

6. INSTALLATION AND ACCEPTANCE

- Installation by Datacolor, when included in the purchase price, is complete when the Product passes Datacolor's installation and test procedures.
- For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by Datacolor. For Products without installation included in the purchase price, acceptance by Customer occurs upon Delivery. If Customer schedules or delays installation by Datacolor more than 30 days after Delivery, Customer acceptance of the Product(s) will occur on the 31st day after Delivery.

7. PAYMENT

- Payment terms are subject to Datacolor's Credit Approval Process. Standard Payment Terms are due 30 days from Datacolor's invoice date (Shipment has left manufacturing facility). Payment is due in US dollars unless otherwise indicated. Invoices for contractual Services and maintenance will be issued in advance of the Services period. Datacolor may change credit or payment terms at any time when, in Datacolor's opinion, Customer's financial condition, previous payment record, or the nature of Customer's relationship with Datacolor so warrants.
- Datacolor may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other Datacolor agreement if, after 10 days written notice, the failure has not been cured.
- Title to hardware Products will pass upon Delivery of Products, unless otherwise indicated on quotation.

8. SERVICES

- Some Services (and related Products) may not be available in all countries. Orders for Services are subject to additional terms set forth in the quotation.
- To be eligible for Services, Products must be at current specified revision levels and, in Datacolor's reasonable opinion, in good operating condition.
- Services does not cover any damage or failure caused by:
 - use of non-Datacolor media, supplies and other products; or
 - site conditions that do not conform to Datacolor's site specifications; or
 - neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer, work or modification by people other than Datacolor employees or subcontractors, or other causes beyond Datacolor's control; or
 - inability of any non-Datacolor products in Customer's environment to correctly process, provide or receive data data (i.e., representations for month, day, and year), and to properly exchange data data with the Products supplied by Datacolor.
- Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when Datacolor provides Services at Customer's site. Customer will notify Datacolor if Products are being used in an environment which poses a potential health hazard to Datacolor employees or subcontractors; Datacolor may require Customer to maintain such Products under Datacolor supervision.
- Upon 60 days written notice, Datacolor may cancel Services orders or delete Products no longer included in Datacolor's Services or Products offering.

9. WARRANTY

- Product Warranty period shall be ninety (90) days unless otherwise set forth in the quotation. Notwithstanding anything to the contrary set forth herein, in any quotation or in any other agreement, in no event shall any warranty period exceed one (1) year.
- Products purchased from Datacolor outside the U.S. will receive the same warranty unless local law in the country of purchase requires a longer term, in which case the statutory warranty shall be equal to the shortest statutory warranty.
- Datacolor reserves the right to change the warranty. Such changes will affect only new orders.
- The warranty period begins on the date of shipment, or the date of installation if installed by Datacolor. If Customer schedules or delays installation by Datacolor more than 30 days after Delivery, the warranty period begins on the 31st day after Delivery.
- Datacolor warrants Datacolor hardware Products against defects in materials and workmanship. Datacolor further warrants that Datacolor hardware Products conform to Specifications. These warranties do not include periodic recalibration (recommended for some Products), unless specifically covered in the warranty terms for such Products.
- Datacolor warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the Device designed by Datacolor. Datacolor further warrants that Datacolor owned standard Software will substantially conform to Specifications.

Datacolor does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.

- Datacolor does not warrant that the operation of Products or Software will be uninterrupted or error free.
 - If Datacolor receives notice of defects or non-conformance to Datacolor hardware Specifications, or substantial non-conformance to Datacolor owned standard Software Specifications during the warranty period, Datacolor will, at its option, repair (and recalibrate only as necessitated by repairs), or replace the affected Products. If Datacolor is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to refund of the purchase price upon prompt return of the entire Product to Datacolor. Customer will pay expenses for return of such Products to Datacolor. Datacolor will pay expenses for shipment of repaired or replacement Products, except for Products returned to Customer from another country. Datacolor will replace, at no charge, parts which are defective and returned to Datacolor within 90 days of delivery.
 - Datacolor warrants that Services will be provided in a professional and workmanlike manner.
 - Some newly manufactured Datacolor Products may contain and Services may use remanufactured parts which are equivalent to new in performance.
 - The above warranties do not apply to defects resulting from improper or inadequate maintenance or calibration by Customer; Customer or third party supplied software, interfacing or supplies; unauthorized modification; improper use or operation outside of the Specifications for the Product; abuse, negligence, accident, loss or damage in transit; improper site preparation; or unauthorized maintenance or repair.
- THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. DATACOLOR SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**

10. LICENSES

- "Use" means storing, loading, installing, executing or displaying Software on a Device.
"Software License" means the Use authorization(s) for the Software specified by Datacolor in its quotation, invoice or other documentation. Each Software License has a corresponding License Fee.
"License Fee" means the fee or fees designated by Datacolor for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.
- In return for the License Fee, Datacolor grants Customer a non-exclusive license to Use the Software listed in Customer's order in conformance with the applicable Software License. Details of the types of Software Licenses offered are available from Datacolor on request. If no Software License is specified, then, in return for the applicable fee, Datacolor grants Customer a license to use one copy of the Software on one Device at any one time. All Software Licenses will be perpetual unless terminated, transferred or otherwise specified.
 - If Customer is a Datacolor authorized reseller, Customer may sublicense the Software to an end-user for its Use, or (if applicable) sublicense the Software to a Datacolor authorized reseller for subsequent distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Section 10 in a written sublicense agreement, which will be made available to Datacolor upon request.
 - Unless otherwise permitted by Datacolor, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software on a backup Device, provided that copies and adaptations are used in no other manner and provided further that the Use on the backup Device is discontinued when the original or replacement Device becomes operable.
 - Customer must reproduce all copyright notices in or on the original Software on all permitted copies or adaptations. Customer may not copy the Software onto any public or distributed network.
 - Bundled Software or firmware provided to Customer may only be used when operating the associated Device in configurations as sold or subsequently upgraded by Datacolor.
 - Updates, upgrades or other enhancements are available under Datacolor Services agreements. Datacolor reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.
 - The Software is owned and copyrighted by Datacolor or by third party suppliers. Customer's license confers no title or ownership and is not a sale of any rights in the Software, its documentation, or the media on which they are recorded or printed. Third party suppliers may protect their rights in the Software in the event of any infringement.
 - Customer will not disassemble or decompile the Software without Datacolor's prior written consent. Where Customer has other rights under statute, Customer will provide Datacolor with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software and only with the express written approval of an authorized Datacolor representative.
 - Customer's Software License is transferable subject to Datacolor's prior written authorization and payment to Datacolor of any applicable fees. Customer will immediately upon transfer deliver all copies of the Software to the transferee. The transferee must agree in writing to the terms of Customer's license. All license terms will be binding on involuntary transferees, notice of which is hereby given. Customer's license will automatically terminate upon transfer.
 - Datacolor may terminate Customer's or any transferee's or sublicensee's Software License upon notice for failure to comply with any applicable license terms. Immediately upon termination, the Software and all copies of the Software will be destroyed or returned to Datacolor. Copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or sublicensee's data base, will be removed and destroyed or returned to Datacolor. With Datacolor's written consent, one copy of the Software may be retained subsequent to termination for archival purposes.
 - If the Software is licensed for use in the performance of a U.S. government prime contract or subcontract, Customer agrees that Software is delivered as "commercial computer software" as defined in DFARS 252.227-7014 (Jun 1995), or as a "commercial item" as defined in FAR 2.101(a), or as "Restricted computer software" as defined in FAR 52.227-19 (Jun 1987) (or any equivalent agency regulation or contract clause), whichever is applicable. Customer further agrees that the Software has been developed entirely at private expense.
 - Customer will keep the Software, documentation and related information confidential.

11. LIMITATION OF LIABILITY AND REMEDIES

- To the extent Datacolor is held legally liable to Customer, Datacolor's liability is limited to:
 - Payments described in Sections 9 above;
 - Damages for bodily injury;
 - Direct damages to tangible property up to a limit of U.S. \$100,000;
 - Other direct damages for any claim based on a material breach of Services, up to a maximum of 12 months of the related Services charges paid by Customer during the period of material breach; and
 - Other direct damages for any claim based on a material breach of any other term of these Terms, up to a limit of U.S. \$100,000 or the amount paid to Datacolor for the associated Product, whichever is less.
- Notwithstanding Section 12 a) above, **IN NO EVENT WILL DATACOLOR OR ITS AFFILIATES, SUBCONTRACTORS OR SUPPLIERS BE LIABLE FOR ANY OF THE FOLLOWING:**
 - INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (including downtime costs or lost profits).
 - Actual loss or direct damage that is not listed in 12 a) above;
 - Damages for loss of data, or software restoration; or
 - Damages relating to Customer's procurement of substitute products or services (i.e., "cost of cover").
- The remedies in these Terms are Customer's sole and exclusive remedies for breach of warranty, breach of contract or any other cause of action.**

12. GENERAL

- Datacolor will not be liable for performance delays or for non-performance due to causes beyond its reasonable control.
- If either party is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy (which is not dismissed within 90 days of filing), has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- Customer may not assign any rights or obligations hereunder without prior written consent of Datacolor. Datacolor may assign its rights and obligations hereunder upon notice to Customer.
- Customer, who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. Datacolor may suspend performance if Customer is in violation of applicable regulations.
- Disputes arising in connection with these Datacolor Terms and Conditions of Sale and Service will be governed by the laws of the State of New Jersey, USA or, if required by local law, under the laws country and locality in which Datacolor accepts the order. These Terms shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods.
- Customer submits to the exclusive jurisdiction of the state or federal courts of Mercer County, New Jersey. Customer hereby waives any right to object to such venue.
- Provisions herein which by their nature extend beyond the termination of any sale or license of Products or Services will remain in effect until fulfilled.

