

TERMS AND CONDITIONS FOR THE PURCHASE, SHIPPING AND DELIVERY OF DATAMED PRODUCTS

Effective 1/1/2021

All products shipped by Datamed® are subject to the terms and conditions of a written license agreement, to the extent executed between Datamed and you (customer), or an end user license agreement accepted through installation (which can be viewed and/or downloaded at www.datamed.com/docs/Datamedft_eula.pdf). Datamed delivers all products pursuant to the terms of its quote and such license agreement, as well as, to the extent not inconsistent with the quote or license agreement, these terms and conditions. Datamed expressly rejects all terms and conditions not incorporated in such quote, license agreement or these terms and conditions, including without limitation terms and conditions provided in customer's purchase order(s). Acceptance, installation and/or use of the enclosed products constitutes acceptance by customer of Datamed's terms and conditions. If customer does not agree with the terms and conditions of the quote and/or such license agreement and these terms and conditions, customer must not install the delivered products and promptly return them unused to Datamed. All Datamed software is user-installed and comes with installation and operation instructions. Support / Maintenance Plans are available for an additional fee and are subject to the terms which can be viewed and/or downloaded at https://datamed.com/docs/datamed_smp_description.pdf.

PAYMENT TERMS

Unless otherwise provided in the applicable quote or separate written agreement, payment terms are net thirty (30) days from receipt of invoice, via check drawn on a US bank, wire transfer, or ACH direct deposit. All prices are in U.S. dollars and are exclusive of any applicable taxes.

Customer will pay a late charge of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, for all undisputed payments received more than 10 days after written notice of late payment. Customer shall reimburse all costs and expenses for attorney's fees incurred in collecting any amounts past due. Failure to make timely payment on a purchase of Datamed products, and in addition to any other rights and remedies, entitles Datamed by notice to customer to suspend the performance of its obligations to provide support and maintenance, until any and all outstanding undisputed amounts are paid in full.

Software products are not returnable once installed. Because the security key contains the license(s), lost, stolen, destroyed, or otherwise corrupted keys cannot be replaced.

DELIVERY AND RISK OF LOSS

Customer is responsible for and shall pay all freight and transportation costs, insurance costs, import/export duties and taxes, customs charges, and any other related shipping expenses necessary to deliver Datamed products to customer. The delivery shall be made ex works (according to the current version of incoterms). Risk of loss of Datamed products shall pass to customer at the shipping point. Title to the media (if applicable) that software-based Datamed products are recorded on remain with Datamed and shall not pass to the customer until customer has paid Datamed in full all amounts owed with respect to Datamed products.

Title to all copyrights, patent rights and intellectual property rights of Datamed products are retained by Datamed and its suppliers and do not pass to customer or end user in any manner.

TAXES

Customer shall pay, indemnify and hold Datamed harmless from, all import duties and taxes, customs fees, levies or imposts, and all sales, use, value added or other taxes of any nature, other than taxes on Datamed's net income, and all government permit or license fees assessed upon or with respect to any products sold or licensed to customer and any services rendered to customer (except to the extent customer provides Datamed with a valid tax exemption certificate).

DISCLAIMER

CUSTOMER ACKNOWLEDGES THAT CERTAIN DATAMED PRODUCTS ARE NOT MEDICAL DEVICES SUBJECT TO FEDERAL REGULATIONS ALTHOUGH THEY MAY BE CONNECTED TO AND/OR USED IN CONJUNCTION WITH MEDICAL DEVICES. CUSTOMER FURTHER ACKNOWLEDGES THAT SUCH DATAMED PRODUCTS HAVE NOT RECEIVED APPROVAL FROM THE UNITED STATES FOOD AND DRUG ADMINISTRATION OR OTHER FEDERAL, STATE OR LOCAL REGULATORY AGENCIES AND HAVE NOT BEEN TESTED BY DATAMED FOR SAFETY OR EFFICACY IN FOOD, DRUG, MEDICAL DEVICE, COSMETIC, COMMERCIAL OR ANY OTHER USE, UNLESS OTHERWISE STATED IN DATAMED'S TECHNICAL SPECIFICATIONS OR MATERIAL DATA SHEETS FURNISHED TO CUSTOMER.

NON-USE WITH FDA CLASS 3 DEVICES

Customer agrees that Datamed products will be solely distributed for use with devices that are considered FDA Class 1 or Class 2 medical devices or equivalent European 93/42/EEC Annex F classifications of Class 1, 2a or 2b, and further that Datamed products will not be distributed to be used for Class 3 medical devices with the exception of 12 lead ECGs received from defibrillators/monitors.

GOVERNING LAW

Except as expressly provided otherwise in the applicable License Agreement, the purchase and delivery of the products and related services subject to these terms and conditions are governed by and construed in accordance with the laws of the State of Tennessee without regard to its conflict of law provisions. You agree that the state courts in and federal courts for Williamson County, Tennessee, will have exclusive jurisdiction and venue over any claims arising out of or related to such purchase and delivery.

CHANGES TO TERMS AND CONDITIONS

Datamed reserves the right, at its sole discretion, to modify or replace these terms and conditions at any time, which revised terms and conditions, once posted, shall govern purchases of products made at any time thereafter.