



# STANDARD TERMS & CONDITIONS

**DATA SIFT Pty Ltd**  
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## 1. Agreement:

- a. This document sets out the terms and conditions under which Data Sift Pty Ltd. (referred to as Data Sift thereafter) provides products, services, consultancy and any other work to you (referred to as Client thereafter). By making any payment, or by continuing to use the products, services, consultancy or any other work performed/provided by Data Sift the Client agrees to be bound by these terms and conditions.
- b. These terms shall form the sole terms and conditions of the agreement between the Client and Data Sift and supersedes all other written and or verbal conditions, agreements, communications and representations between the parties in regard to the items listed in all Data Sift's quotations and invoices, unless expressly amended or agreed in writing by a Director of Data Sift. The Client acknowledges that to the extent that Data Sift has made any representation, written or otherwise, the Client has been provided sufficient opportunity to independently verify the accuracy of that representation.

## 2. Quotations:

- a. Any quotation issued by Data Sift is valid for 14 days from the date of offer.
- b. All work will only commence upon receipt of a copy of the quotation signed by the Client, which forms a binding agreement between the parties as per the terms and conditions stated in this agreement. By signing the quotation the signatory declares their authority to engage the Client in a legally binding agreement between the parties.
- c. Any additional time, materials or work not within the scope of work stated on the quotation shall be deemed to be in addition to the contract between the parties. Additional quotations shall be issued by Data Sift and acceptance is required in the same manner as the original quotation prior to commencement of any additional work. Data Sift will not be held responsible for non-performance of work where a signed copy of the quotation or additional quotation has not been received by Data Sift.

## 3. Invoices and Payment:

- a. For Products, Set Up and ad-hoc Consultancy Service invoices, payment must be made in full upon acceptance of quote and prior to the delivery and installation of a new product licence, renewal of support agreement on existing licence, commencement of any tasks or consultancy work undertaken by Data Sift or its contractors.
- b. For monthly Subscription Service Invoice and monthly Bookkeeping Service Invoice, payment must be made in full in advance, 14 days prior to delivery of services.
- c. For Training Invoices, payment must be made in full prior to registration and commencement of the course.
- d. Payment of monthly Subscription Services or monthly Bookkeeping Services Invoices can only be made by completing our continuous credit card authorisation form. A copy of the form can be found on our website. This recurring payment will not incur any credit card surcharges.
- e. Payment of all Product and Service invoices other than monthly Subscription service or monthly Bookkeeping service invoices can be made directly to our bank account as follows: **Bank: NAB (National Australia Bank), Swift Code: NATAAU3303M, BSB: 086-006, Account number: 958310808, Account Name: Data Sift Pty Ltd.** Or via credit card over the phone / completing our credit card authorisation form. A copy of the form can be found on our website. Please note that payment via credit card will incur 1.5% credit card surcharge.
- f. Please email a copy of your remittance to [accounts@datasift.com.au](mailto:accounts@datasift.com.au).
- g. Ownership of any goods and services stated on the invoice does not pass to the Client until payment in full is received for all outstanding accounts issued by Data Sift.
- h. Data Sift reserves the right to adjust the rates and charges for all its products and services on 1 January or 1 July in each year by an amount not less than the changes in the Consumer Price Index.
- i. Data Sift may at its sole discretion charge interest on overdue accounts each day that the account remains overdue at the rate of 2.5% above the NAB Bank's variable "Reference Rate" as applicable from time to time.
- j. The Client accepts the liability to pay all costs and expenses incurred by Data Sift, its advisers, contractors, mercantile agents and any other person, in respect of any action instituted or considered against the Client relating to collection of debt.
- k. All payments received by Data Sift shall be applied as follows when applicable:
  1. Firstly, towards any costs incurred by Data Sift referred to above (or any part thereof);
  2. Secondly, towards any interest payable as set out above (or any part thereof); and
  3. Thirdly, towards any amounts payable by the Client to Data Sift.

## 4. Termination:

- a. Any request for termination or refund relating to monthly Subscription Services or Bookkeeping Services must be made in writing and 30 days prior to the termination date, for all other items 14 days prior to termination date.
- b. The Client may terminate this agreement at any time by providing a written notice but without affecting the liability of the Client to pay for all the products, services and fees incurred and or ordered by Data Sift up to and including the date of termination and if applicable any reasonable and direct loss or damage suffered by Data Sift in consequence of the termination.
- c. No terminations or request for refund will be accepted after the delivery and installation of Product licence or renewal of Product Support agreement or issuing of a Training registration.
- d. Data Sift reserves the right to bill the Client any Work In Progress performed or charges incurred by Data Sift up to the date the Client's termination notice is received, including but not limited to any set up work, consultancy or monthly subscription or bookkeeping work performed by Data Sift.
- e. Data Sift may suspend the supply of its products and/or services and terminate this agreement at any time if Data Sift issues a notice of default to the Client pursuant to clause 'Dispute Resolution' or the Client does not give necessary instructions and information within a reasonable time of requests to do so, or Data Sift believes that by continuing to provide its products and services it may breach professional ethics, rules of conduct, or Client being a company goes into liquidation/ has a receiver or administrator appointed, or Client being a person is declared bankrupt.

## 5. Client Responsibilities:

- a. Make available to Data Sift such information, documents and particulars to enable Data Sift to deliver the Client's requirements or which might reasonably be regarded as being relevant to Data Sift for purpose of providing its products and services.

- b. Make arrangements to enable Data Sift to safely enter any land or premises necessary for Data Sift to be able to provide the products and services in a safe and timely manner.
  - c. Obtain all approvals, authorities, licences and permits which may be required for lawful implementation and provision of products and services.
  - d. If the Client becomes aware of any matter which may affect the scope, timing, implementation or delivery of any products or services provided, give written notice of the matter to Data Sift.
- 6. Data Sift Responsibilities:**
- a. Data Sift will provide the products and services with reasonable care and will exercise professional judgement free from any known conflict of interest.
  - b. Data Sift will act in Client's best interest but not do or provide anything which is unethical or unlawful.
  - c. Data Sift will be entitled to treat all information received from the Client as reliable and complete, and will not verify any information provided by the Client to Data Sift. The Client should note that failure to provide complete information in a timely manner may render this agreement.
- 7. Confidentiality:**
- a. Each party agrees to not disclose any confidential information received or obtained from the other party as a result of the products and services being provided by Data Sift.
  - b. Each party can disclose confidential information if and to the extent required by law or for the purposes of any judicial proceedings, regulatory or government body.
  - c. Or the information is disclosed on confidential basis to professional advisors/bankers or the information is disclosed to a director/officer/employee or agent of the party whose function requires him or her to have the information.
  - d. Or the other party has agreed to disclosure of information explicitly in writing.
- 8. Intellectual Property:**
- a. The Client agrees that except for third party items in which Data Sift holds limited or no rights thereto, Data Sift owns all title, ownership and proprietary and intellectual property rights, including copyright, trademarks and rights to seek registered designs, patents and other registered property rights, in relation to all documents prepared or provided by Data Sift in connection with providing the products and services to the Client and the Client shall not publish nor make copies or reproductions of any documents unless prior approval in writing is given by Data Sift.
  - b. Data Sift may use technical information gathered or produced by it in connection with providing the products and services, including information concerning configuration, installation or deployment of software, for Data Sift's technical development, product development, marketing and support purposes.
  - c. The Client agrees that notwithstanding anything to the contrary, if the services contain any product, that such a product may be subject to its own terms and conditions or the like and Client warrants and indemnifies Data Sift against any breach of these terms and conditions.
  - d. The Client agrees that provided all payments due to Data Sift from the Client have been made, has a limited, perpetual, non-transferable, non-sublicensable, royalty free licence to use the products, services and documents provided by Data Sift for the purposes for which these items were provided. The Client agrees not to use these items for capital raising purposes without Data Sift's permission.
- 9. Non-Solicitation:**
- a. The Client agrees that Data Sift has made significant investment to recruit, retain and train its staff. To protect this investment, the Client agrees not to, either directly or indirectly via a third party, employ, approach, solicit, engage or direct for the purposes employment or contracting services of any kind or type, any of Data Sift's staff or contractors during the term of this agreement and 12 months thereafter.
  - b. In an event that the Client does not comply with the above non-solicitation clause, the Client agrees to immediately pay Data Sift a placement fee of 150% of the staff member's annual remuneration package including superannuation and fees/on-costs, or in case of a contractor 150% of the average total expected payments to be made to the contractor over the subsequent 12-month period had the contractor continued to work for Data Sift for those 12 months.
  - c. The Client agrees and acknowledges that the foregoing is a reasonable measure of damages that Data Sift will incur as a result of the Client not complying with the non-solicitation clause.
- 10. Liability:**
- a. The maximum liability of Data Sift to the Client arising out of the provision or non-provision of its products and services by Data Sift or arising out of this agreement or any other act or omission by Data Sift pursuant to common law or equity or statute, shall be the amount agreed in writing between the Client and Data Sift, or AUD\$100,000, whichever is the lesser amount.
  - b. Data Sift shall have no liability whatsoever at common law or equity or any statute in relation to provision of the products and services arising from any act or omission by Data Sift relating directly or indirectly to the products and services in the event that any transaction contemplated by the Client does not proceed or for a failure or delay in provision of the products and services if such a failure arises from circumstances beyond Data Sift's control, except to the extent caused by gross negligence or fraudulent act or omission or breaches of the agreement by Data Sift (which is not due to the Client's inability to provide a signed copy of the quote or payment in a timely manner or Client's negligence, omission, acts or breaches of this agreement).
  - c. Data Sift shall be deemed to have been discharged absolutely from all liability arising from its provision of products and services or arising from any act or omission relating directly or indirectly to its products and services pursuant to common law or equity or any statute, at the expiration of 6 months from the completion of any duties and tasks provided by Data Sift. After this date the Client and any persons or entities claiming through or under the Client shall not be entitled to commence any action, proceedings and claim whatsoever against Data Sift. The date of completion for each item, task, job etc. is deemed to be the date of the last invoice issued by Data Sift relating to that specific item, task, job etc.
  - d. The Client shall indemnify and hold Data Sift harmless from all liability in relation to a third party product or work performed by a third party except where the third party is engaged or employed by Data Sift (as evidenced in writing).
- 11. Warranty:**
- a. Data Sift's products and services are provided without any warranties of any kind, either express or implied, including warranties of title, non-infringement, merchantability or fitness of any particular purpose and any warranties to accuracy, completeness or currentness.
  - b. If warranties are provided by third party products and software, the Client shall indemnify Data Sift against liability of delivery against same.
- 12. Dispute Resolution:**
- a. If either party is in breach of this agreement then the party alleging the breach shall serve a default notice to the other party setting out the full particulars of the alleged breach and the acts required to rectify the breach.
  - b. Within 30 days of service of default notice either party may by serving a notice elect to have a dispute resolved by arbitration in accordance with the provision of the Commercial Arbitration Act 2012.
  - c. Either party shall be entitled to be represented by a legal practitioner and the arbitration will be held in Western Australia unless otherwise agreed in writing.
  - d. The appointment of arbitrator shall be made by the Institute of Arbitrators and Mediators Australia and shall be final and binding upon the parties and the arbitrator shall be deemed to be acting as an expert.

**13. Enforcement:**

- a. Any omission by Data Sift to enforce any of the provisions of this agreement shall not operate as a waiver by Data Sift and will not prejudice the rights of Data Sift to enforce any of the provisions.
- b. If any provisions or part provisions of this agreement are invalid, unenforceable or illegal then it shall be deemed deleted from this agreement and the remaining provisions and part provisions will continue to apply with full force and effect.

**14. GST and taxes:**

- a. Any and all fees stated in any agreement are exclusive of any charges levied by any government authority at local/council/shire/state/municipal or commonwealth/federal level. These charges levied by the authorities include but are not limited to GST, Withholding Tax, penalties, interest, rates etc and specifically are not part of Data Sift's income.
- b. On presentation of a tax invoice or invoice, as the case may be, the Client expressly agrees to pay Data Sift for any consideration in relation to the products and services provided by Data Sift, any GST levied on taxable supplies and all other applicable taxes, penalties, interest, rates etc levied on the provision of the products and services.

**15. Notice:**

A notice to be served under this agreement shall be deemed to have been duly served if it is in writing and is sent to the registered address of Data Sift or the registered address of the Client by certified registered mail or personal delivery.

**16. Assignment:**

Neither party may assign, transfer or sub-let any obligation under this agreement without a written consent of the other.

**17. Relationship:**

Nothing in this agreement shall constitute or create the relationship of partnership, employment, agency or joint venture between Data Sift and the Client.

**18. Law and Jurisdiction:**

This agreement is governed by the laws in force in Western Australia and under the jurisdiction of the courts of Western Australia.

**19. Force Majeure:**

Data Sift will not be liable in damages or otherwise for any failure to provide the products and services which is caused, whether wholly or partially, by an event beyond its reasonable control, including but not limited to: act of God; force majeure; war; fire; explosion; acts of terrorism; rioting; burglary; theft; civil disturbances; restrictions by government or other competent authority; general economic trends; strikes; industrial actions; lockouts (whether at Client's premises or not); accidents either at Client's premises or when in transit to and from those premises; failure by subcontractors and late arrival of product, inventory or other material.

If a force majeure event occurs and Data Sift is liable for fees in relation to the products and services, Client expressly agrees to pay Data Sift these fees even if the product/service/task is incomplete.

**20. Personal Property Securities Act:**

- a. The Client acknowledges and agrees that these terms give rise to a security interest and constitute a security agreement for the purposes of the Personal Property Securities Act 2010 and the security interest is taken in all goods and services previously supplied by Data Sift to the Client, if any, and all goods and services that will be supplied in the future by Data Sift to the Client during the continuance of the party's relationship.
- b. The Client undertakes to sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, which Data Sift may reasonably require to register a financing statement on the Personal Property Securities Register.
- c. The Client undertakes to reimburse Data Sift for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Security Register and give Data Sift not less than 14 days prior written notice of any proposed changes in the Client's name and/or any other change to the Client's details.
- d. The Client waves any rights to receive notice of any verification statement issued under the Personal Properties Securities Act.

**21. Risk and Title:**

- a. The risk and title in any products or services provided by Data Sift only passes to the Client upon receipt of full payment of all outstanding accounts issued by Data Sift.
- b. The Client acknowledges and expressly agrees that for certain products and services, the title may never pass to the Client due to third party rights which may exist.

**22. Miscellaneous:**

- a. This agreement may only be varied in writing signed by both parties.
- b. If applicable and unless otherwise specified in writing, the persons providing the products and services to the Client shall be determined by Data Sift at its sole discretion. Data Sift provides products and services, not specific people.
- c. If in providing the products and services, circumstances arise which require skills outside of the field of practice of Data Sift, then Data Sift may after obtaining Client's approval engage a subcontractor to provide the relevant skills.
- d. Data Sift may at any time vary the Terms and Conditions by publishing the varied terms and conditions on the Data Sift website and providing notice as described in these terms and conditions or by providing a notice to the Client's email address specified by the Client.
- e. By continuing to use the products and services provided by Data Sift, the Client acknowledges and agrees to full acceptance of the varied terms and conditions.