

DATA SUPPLY AGREEMENT

BY PLACING YOUR ONLINE ORDER OR ACCEPTING THIS AGREEMENT THROUGH AN ORDER THAT INCORPORATES THESE TERMS, YOU (THE PRIMARY CONTACT OR BILLING CONTACT ON THE ORDER) AGREE TO COMPLY WITH AND BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU CONFIRM THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND THE TERM "CUSTOMER" IN THIS AGREEMENT REFERS TO THAT ENTITY.

This Data Supply Agreement (the "Agreement") is valid for the applicable order and is effective between Data Tools Pty Ltd ABN 21 073 541 385 ("DataTools") and the Company specified in the order (the "Customer") (collectively referred to as the "Parties").

1. Background

- (a) DataTools offers the supply of address list data (the "Data") subject to the terms of this Agreement.
- (b) The Customer wishes to receive the Data from DataTools, and by ordering or using the Data, agrees to be bound by and comply with the terms of the Agreement, and agrees to pay DataTools the fees applicable for the supply of such Data.
- (c) The parties acknowledge that some or all of the Data supplied under this Agreement may be provided to DataTools by DataTools' licensors (including Australia Post) and that the supply of Data to Customer is subject to Customer's compliance with the terms of this Agreement including the Schedules which are incorporated herein.

2. Definitions

"Agreement" is as described in clause 12(a).

"Confidential Information" means information disclosed by, or obtained from, one Party (Disclosing Party) to or by the other Party (Receiving Party) that (i) is by its nature confidential; (ii) is designated by the Disclosing Party as confidential; or (iii) the Receiving Party knows or ought reasonably know is confidential, including the terms of this Agreement, the nature of the products or services being provided by DataTools to the Customer in accordance with this Agreement, information about the Disclosing Party's business, operations, strategy, administration, technology, affairs, clients, personnel, but does not include any such information that is in the public domain or is legally and properly obtained other than through a breach of an obligation of confidentiality. DataTools Confidential Information includes the Data and DataTools pricing, discounts, product information, or Documentation that is not publicly available.

"Customer" means the company specified in the order (including any online order).

"Data" is as described in clause 1(a).

"Documentation" means any user or technical documentation supplied by DataTools (including but not limited to guides available on the DataTools website).

"Loss" means loss, damage, liability, charge, expense, outgoing or cost (including all legal and other professional costs on a full indemnity basis) of any nature or kind.

3. Ownership and Intellectual Property

- (a) Upon Customer's payment of the applicable fees, DataTools agrees to supply to the Customer the Data on a non-exclusive, non-transferable, revocable licence basis for the Customer to access and use the Data solely for the purposes specified in this Agreement and subject to Customer's compliance with the Agreement.
- (b) The Data and any Documentation supplied by DataTools under this agreement remains the property of either or both DataTools and its licensors. This Agreement does not transfer any ownership or intellectual property rights to the Customer.
- (c) The Customer agrees that it shall not reproduce, transfer, distribute, sell, re-sell rent, lease out, sub-licence, commercialise, modify, adapt, disassemble, merge, decompile, reverse engineer or create derivative works of the Data or the Documentation or the mechanism through which the Data is sent or made available to the Customer.
- (d) Customer shall not remove, alter, or obscure any copyright notices, trademarks, or other proprietary rights notices included in the Data or Documentation.
- (e) The Customer shall notify DataTools if it becomes aware of any unauthorised use of the Data or use that is in breach of this Agreement.

4. Warranties

- (a) Each Party represents and warrants to the other Party that the First Party:
 - (i) has full corporate power to enter into this Agreement and each order, and perform its obligations under this Agreement; and
 - (ii) has all licences, authorisations, consents, approvals and permits required by applicable laws to perform the obligations under this Agreement.
- (b) DataTools warrants that it has the right to supply the Data to Customer.

- (c) To the extent permitted by law, DataTools excludes all other warranties, express or implied including warranties of merchantability, fitness for purpose, merchantability, quality, completeness or accuracy of the Data.
- (d) The Customer acknowledges and agrees that:
 - (i) the Data is supplied “as-is”;
 - (ii) its use and reliance on the Data (including the medium through which it is supplied) is at its own risk; and
 - (iii) that DataTools do not warrant or guarantee that the Data shall be error, defect or virus-free nor that it is up to date.
- (e) The Customer warrants and agrees that it shall comply with the Agreement and any reasonable directions from DataTools as required to comply with DataTools’ licensors’ requirements from time to time.

5. Use of Data

- (a) Customer agrees to use the Data in accordance with this Agreement, including the further rights and restrictions set out in Schedule (I) and Schedule (II).
- (b) The Customer agrees to provide reasonable access and information in relation to its use of the Data, as and when required in order for DataTools to audit the Customer’s compliance with the Agreement.

6. Fees and Payment

- (a) Unless otherwise expressly stated, all fees or other sums payable under or in accordance with this Agreement are expressed as being exclusive of GST.
- (b) The Customer agrees to:
 - (i) pay DataTools the fees as set out in the relevant order and any applicable GST; and
 - (ii) pay any other tax, duties or deductions where applicable.
- (c) The Customer acknowledges that due to the nature of the supply of the data:
 - (i) once an order is placed, fees are non-refundable; and
 - (ii) once Data has been made available to Customer, the order is non-cancellable and non-refundable.
- (d) While DataTools shall use commercially reasonable endeavours to supply the Data in a timely fashion, the Customer agrees that DataTools shall not be liable for any Losses that arise as a result of any delay in DataTools’ delivery of the Data.
- (e) The Customer agrees that:
 - (i) payment is due before the Data is supplied by DataTools;
 - (ii) DataTools may deliver the Data by whatever means it thinks appropriate;
 - (iii) DataTools is not be responsible for the installation or integration of the Data; and
 - (iv) any support provided by DataTools to Customer shall be solely at DataTools’ discretion, and may be subject to additional fees.

7. Confidentiality & Security

- (a) Each Receiving Party agrees to:
 - (i) protect all Confidential Information and data of the Disclosing Party to the same extent it protects its own Confidential Information, and not less than a reasonable standard of care;
 - (ii) use Confidential Information of the Disclosing Party disclosed or made available to it in connection with the Agreement solely to exercise its rights and perform its obligations under the Agreement; and
 - (iii) not disclose or otherwise provide or make available any Confidential Information to any person except as permitted under this clause 7 or with the prior written consent of the Disclosing Party.
- (b) Notwithstanding clause 7(a), the Receiving Party may disclose Confidential Information:
 - (i) to its officers, employees, contractors or agents, and legal, financial or other advisers (an “Authorised Person”), provided that the Authorised Person has agreed to confidentiality obligations to protect the Confidential Information in a manner no less protective than the provisions of this Agreement, and only to the extent that the Authorised Person has a need to know for the purposes of this Agreement; or
 - (ii) if the Receiving Party is required to disclose in any legal proceeding or to a government entity, to the extent required by law (and in such case the Receiving Party must, to the extent not prohibited by law, give the Disclosing Party reasonable prior notice of any proposed disclosure of Confidential Information and reasonably cooperate with the Disclosing Party to contest any required disclosure, and seek to minimise the extent of the disclosure of the Confidential Information); subject to the Receiving Party accepting all responsibility and liability for the acts or omissions of any person to whom it discloses or otherwise provides or makes available the Disclosing Party’s Confidential Information in accordance with this clause 7(a).
- (c) If requested to do so by the Disclosing Party, the Receiving Party must immediately cease all use of the Confidential Information and must, at its own expense, return to the Disclosing Party or destroy, as the Disclosing Party directs, all Confidential Information that it holds or controls, and provide written confirmation of the same to the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of any notes and other records that the Recipient is required by law to retain.

- (d) The Customer shall treat the Data supplied by the Supplier as Confidential Information and shall not disclose it to any third party without the prior written consent of the Supplier, except as required by applicable law or where such third party is using the Data for the Customer's internal business purposes in which case the Customer agrees to be responsible for the acts and omissions by the third party in relation to the Data.
- (e) The Customer shall implement reasonable security measures to protect the confidentiality and integrity of the Data.

8. Privacy

- (a) DataTools may use contact information collected about Customers in order to supply the Data, and the Customer acknowledges that certain information DataTools collects from Customer may be shared with third parties; DataTools' use of such information shall be in accordance with the DataTools Privacy policy available at <https://datatools.com.au/privacy-policy/>.
- (b) The Customer represents and warrants that the Customer shall only disclose information to the extent required by DataTools to provide the Data, and that it shall comply with all applicable privacy laws, including providing any required notices and obtaining all necessary consents for any personal information collected, used or disclosed.

9. Term and Termination

- (a) This Agreement, including the Customer's right to use the Data, shall expire 12 months from the invoice date.
- (b) The Customer agrees that DataTools may direct the Customer to cease access to or return the Data, and DataTools may suspend or terminate the Customer's rights under the Agreement at any time upon notice (or in the event of non-payment, refrain from providing access to or supplying the Data) if:
 - (i) DataTools' licensors suspend or terminate DataTools' access or rights to the data; or
 - (ii) the Customer contravenes (or is believed, based on reasonable grounds, to be in possible contravention of) any laws; or
 - (iii) the Customer commits a breach of this Agreement (including late or non-payment) or is unable to perform its obligations pursuant to this Agreement.
- (c) DataTools shall where possible provide the Customer with at least 7 Business Days' prior written notice to remedy the breach before exercising its rights under this clause, except where the breach is a material breach incapable of remedy or where the contravention or breach by the Customer relates to misuse of the Data in which case DataTools may immediately suspend or terminate the Customer's rights and the Agreement without providing the Customer with an opportunity to remedy the contravention or breach.
- (d) Upon termination, the Customer's right to access or use the Data terminates and the Customer must at DataTools' request return or permanently delete the Data.

10. Limitation of Liability

- (a) In no event shall either Party be liable to the other for any indirect, incidental, consequential, or punitive damages arising out of or in connection with this Agreement.
- (b) Subject to clause 10(c) below, the maximum aggregate liability of either party with respect to all Losses arising out of or related to this Agreement or the Customer's order (whether under statute, in contract, in tort or otherwise), shall be limited to the equivalent of the fees paid under the order in the 12 months immediately preceding the event giving rise to such liability.
- (c) The limitations of liability set out in clause 10(a) and 10(b) do not apply in respect of a Party's liability for:
 - (i) damage to tangible personal property or real property caused by that Party;
 - (ii) any fraudulent act or omission, gross negligence, wilful misconduct or deliberate breach of this Agreement by that Party;
 - (iii) that Party's breach of applicable laws;
 - (iv) personal injury, sickness or death caused by that Party;
 - (v) any indemnity provided by that Party under this Agreement;
 - (vi) in the case of the Customer, any fees payable under this Agreement; or
 - (vii) breach by that Party of any privacy or confidentiality obligations set out in this Agreement.
- (d) Each Party must take reasonable steps to mitigate any Loss it suffers or incurs under or in connection with this Agreement.
- (e) The liability of a Party for any Loss under or in connection with this Agreement will be reduced proportionately to the extent that such Loss has been caused or contributed to by the other Party's acts or omissions.

11. Governing Law, Jurisdiction and Dispute Resolution

- (a) This Agreement shall be governed by and construed in accordance with the laws of New South Wales, Australia. Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the courts of Sydney, New South Wales.
- (b) Any disputes arising out of or in connection with this Agreement shall be resolved through good-faith negotiations between the Parties. If the dispute cannot be resolved amicably, the dispute may, at DataTools' election, be submitted to binding arbitration or mediation.

12. General

- (a) The main terms of this Agreement, applicable Schedules to this Agreement, the terms of the relevant order confirmed by DataTools (which may be an online order), and any supplied invoice together form the "Agreement" between the Customer and DataTools. To the extent there is any conflict, the documents that appear earlier in the list herein shall prevail.
- (b) This Agreement constitutes the entire understanding between the Parties and supersedes all prior agreements, representations, and understandings, whether written or oral, relating to the supply of Data.
- (c) No other terms (including Customer purchase order terms) shall apply.
- (d) If any part of the Agreement is deemed unenforceable by a court of competent jurisdiction or any other competent authority, that specific part will be separated from the rest of the Agreement. The remaining parts of the Agreement will continue to be valid and enforceable to the fullest extent allowed by law.
- (e) If either party is prevented from performing its obligations under this Agreement due to circumstances beyond its reasonable control, such as acts of God, natural disasters, or government actions ("Force Majeure Event"), the affected party's obligations shall be suspended for the duration of the Force Majeure Event. The affected party shall promptly notify the other party of the Force Majeure Event and take reasonable efforts to mitigate its impact. Upon the cessation of the Force Majeure Event, the parties shall resume performance of their obligations under this Agreement.
- (f) DataTools may amend this Agreement from time to time by posting a revised version on the DataTools Website; such amended terms are effective upon posting. The Customer agrees that it is responsible for checking the DataTools Website regularly for amendments to this Agreement. The Customer agrees that if it continues to use the Data after the effective date of any amendments to this Agreement, the Customer agrees to be bound by the amended terms. If however the Customer wishes to stop using the Data, the Customer may do so immediately and terminate this Agreement. No other variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party.
- (g) Any waiver of a breach of the Agreement will not be considered a waiver of any other breach or term of the Agreement. Waivers will only be effective if they are made in writing.
- (h) Nothing in this Agreement is to be construed to create a partnership, joint venture or agency relationship between the Parties.
- (i) The liability and indemnity clauses and any other obligations which are expressed to or by their nature survive expiry or termination of this Agreement, will survive expiry or termination and are enforceable at any time at law or in equity.
- (j) Any notices to DataTools in relation to this Agreement, must be sent in writing to the Legal Department, DataTools Pty Ltd, Office 310/20A Lexington Drive, Bella Vista NSW 2153 or by e-mail to legal@datatools.com.au. Notices will only be validly served pursuant to this Agreement by the Customer, where the notice has been sent by tracked delivery (which can be used to reasonably demonstrate that the notice was received by DataTools) or where receipt of the notice is acknowledged in writing by DataTools.

Schedule (I) – Permitted and Prohibited Uses of the Data

Data	Contains Personal Information	Permitted and Prohibited Uses of the Data
Address Lists	No	<p>The Customer can use the Data to:</p> <ul style="list-style-type: none"> (a) market and communicate to its existing customers or list of addresses in the Data dataset; (b) perform analytics and data integration for its own internal use; (c) add attributes to the Data dataset for its own internal use; and (d) assist with planning and allocating resources and products or providing services to its existing customers. <p>The Customer cannot:</p> <ul style="list-style-type: none"> (e) supply or make the Data dataset available to a third party unless that third party is using the Data dataset on behalf of the Customer to provide services to the Customer and that third party does not retain or use the Data dataset for any other purposes; (f) sell, transfer distribute or otherwise deal with the Data dataset; or (g) use the Data dataset to validate addresses or create a product that validates addresses or similar.

Schedule (II)

1. Data Principles

- (a) The Customer acknowledges that some or all Data supplied under this Agreement may be provided by Australia Post, and that Australia Post is a government business enterprise and, as such, it must have regard to community expectations and public policy when conducting its activities.
- (b) In addition to any limitations or requirements set out in an order or otherwise in writing by DataTools, the Customer must adhere to the following principles (the “Data Principles”) when accessing or using the Data through the Data:
 - (i) the Data must not be used in any way that is likely to (as determined by DataTools or Australia Post, acting reasonably):
 - A) cause harm, including financial, physical or psychological harm, to an individual;
 - B) be contrary to the expectations of public trust in Australia Post;
 - C) be contrary to the values of Australia Post; or
 - D) be objectionable to the Australian community;
 - (ii) the Data must not be used:
 - A) for any fraudulent purpose, including identity theft;
 - B) to discriminate against, harass, vilify, offend or stalk a person, or assist any other party to engage in such conduct; or
 - C) for the purpose of avoiding compliance with any laws, including laws regarding modern slavery.

2. Provision of Data to Customers – Customer’s Responsibilities

- (a) The Customer must not resupply the Data to a third party, however may allow Customer third party service providers performing work on behalf of the Customer to use the Data for the Customer’s internal business purposes provided that the Customer will be responsible and liable for the acts or omissions of any third party service providers to which they make the Data available as if they were the Customer’s own acts or omissions.
- (b) The Customer acknowledges and agrees that:
 - (i) it must not make any false, misleading or deceptive representations (including to any other customer) in relation to the Data, including as to the quality or other characteristics of the Data;
 - (ii) it must act in good faith at all times towards DataTools and Australia Post and give DataTools and Australia Post such assistance and co-operation as reasonably requested in order to provide the Data; and
 - (iii) it must not do anything which may adversely affect the reputation of DataTools or Australia Post.
 - (iv) it must ensure that any Australia Post or DataTools copyright and trademark notices that are included within the Data must not be removed, and
 - (v) it is not permitted to use any DataTools or Australia Post branding (including branding of any DataTools or Australia Post products) without express prior permission in writing from DataTools or Australia Post respectively.
 - (vi) Neither DataTools nor Australia Post will be responsible for any delay or failure by the Customer to comply with its obligations under this Agreement to the extent such delay or failure is caused or contributed to by any delay or failure by the Customer (including any of its officers, employees, contractors, agents or Customers).
- (c) This Agreement does not create a contractual relationship between Australia Post and any Customer granted a right to use the Data by DataTools, and the Parties agree that Australia Post has no obligations or liability to any Customers.
- (d) The Customer indemnifies, and will keep indemnified and hold harmless, DataTools and Australia Post including its affiliates, directors, officers, employees and agents, and its data services providers (“those indemnified”) from and against any Loss (including Loss arising in connection with Claim by a third party) that those indemnified may suffer or incur in connection with:
 - (i) a Claim in relation to the Data provided under the Agreement;
 - (ii) a Customer’s wilful or negligent breach of this Agreement; or
 - (iii) a Customer’s use, access or resupply of the Data; or
 - (iv) a Customer’s violation of any applicable law or intellectual property rights or any prohibition under the Agreement.