



CUSTOMER DOCUMENTATION

# Terms and Conditions DataOne

General Terms and Conditions governing colocation (housing) and management & support services provided by DataOne.

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**Version**

1.0

**Published**

October 2026

**Applies to**

All DataOne services

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### 1 Definitions and scope

1.1 In these Terms and Conditions: **DataOne** means DataOne (KVK 74775855, VAT NL860022158B01), registered at Bruynvisweg 11, 1531 AX Wormer, the Netherlands; **customer** means the party that enters into an agreement with DataOne; **facility** means the DataOne site where services are provided; **agreement** means any agreement between DataOne and customer for colocation (housing) and/or management & support services.

1.2 These Terms and Conditions apply to all offers made by, and all services of any kind provided by, DataOne to customer, including colocation (housing) and management & support services and any future service DataOne may offer, unless the parties agree otherwise in writing. Any purchasing or other conditions put forward by customer are expressly rejected.

1.3 If any provision of these Terms and Conditions is or becomes invalid or unenforceable, the remaining provisions remain in full force. The parties will in that case agree a replacement provision that reflects the intent of the original provision as closely as possible.

### 2 Formation of the agreement

2.1 All offers made by DataOne are without obligation unless expressly stated otherwise. An agreement is formed when DataOne confirms customer's order in writing (including by email), or by DataOne's actual performance of it.

2.2 Customer warrants the accuracy and completeness of the information it provides to DataOne, including company information required for identification and billing.

### 3 Pricing and payment

3.1 All prices are in euros and exclusive of VAT, unless stated otherwise. DataOne invoices monthly in advance, unless agreed otherwise in writing.

3.2 Invoices are payable within the period stated on the invoice, or within 14 days of the invoice date if no period is stated. If payment is not made on time, customer owes statutory commercial interest on the outstanding amount, without the need for a notice of default, plus reasonable collection costs.

3.3 DataOne may adjust its rates annually for indexation, and otherwise with at least three months' notice. If customer does not agree to a rate change other than indexation, customer may terminate the agreement with effect from the date the change would take effect.

3.4 Customer may not suspend any payment obligation or set off amounts owed, except to the extent mandatory law provides otherwise.

3.5 DataOne may require a security deposit or other form of security from customer before entering into or continuing the agreement, in particular where customer's financial position reasonably gives DataOne cause to do so. The deposit is settled against any amounts still outstanding at the end of the agreement; any remainder is refunded to customer.

## **4 Term, renewal and termination**

**Minimum term.** Agreements run for a minimum of 12 months, with six months' notice to end them.

4.1 Agreements are entered into for a minimum term of 12 months, unless the parties agree a different term in writing. The agreement is automatically renewed thereafter for successive periods equal to the original term, unless either party terminates in writing with at least six calendar months' notice before the end of the then-current term.

4.2 DataOne may terminate or suspend the agreement with immediate effect and without prior notice of default by written notice if: (a) customer materially fails to perform an obligation under the agreement or these Terms and Conditions, and does not remedy this after being given a reasonable period to do so following written notice; (b) customer violates the Acceptable Use Policy referred to in article 7; (c) customer is granted a suspension of payments or is declared bankrupt; or (d) customer has provided inaccurate or misleading information that was material to DataOne entering into the agreement.

4.3 Following termination of the agreement, customer must remove its equipment from the facility within a reasonable period, in consultation with DataOne. Equipment not collected after this period may be stored at customer's expense, or, after prior written warning, removed by DataOne.

## **5 Services provided by DataOne**

5.1 DataOne makes available to customer the agreed space (rack units, part of a rack, or a private suite), electrical power, cooling and physical access security at the facility, for customer's own equipment ("colocation" or "housing").

5.2 Where agreed, DataOne additionally provides management & support services (including remote hands, receiving and racking equipment, cabling, and basic OS-level assistance), in the manner and at the rates agreed between the parties. Specific service levels, where applicable, are set out in a separate Service Level Agreement forming part of the signed agreement.

5.3 DataOne does not itself provide internet connectivity or bandwidth as its own service; customer arranges this through its own carrier or a carrier introduced by DataOne. DataOne is not responsible for the quality, availability or content of connectivity provided by third parties.

5.4 DataOne will perform the agreed services with reasonable skill and care, but does not guarantee uninterrupted or error-free service at all times. Planned maintenance is announced in advance where reasonably possible.

## **6 Customer obligations**

6.1 Customer is responsible for the management, configuration and maintenance of its own equipment and any software and data installed on or processed through it, unless the parties have agreed otherwise in writing as part of management & support.

6.2 Customer warrants that its equipment complies with applicable technical, electrical and safety standards, and does not exceed the power and weight limits specified by DataOne.

6.3 Customer will treat the facility, and the equipment and facilities of DataOne and of other customers, with care, and comply with the house rules set by DataOne.

## **7 Acceptable use and notice-and-takedown**

7.1 Use of equipment placed with DataOne is subject to DataOne's Acceptable Use Policy ([dataone.nl/acceptable-use-policy](https://dataone.nl/acceptable-use-policy)), which forms part of, and is incorporated into, this agreement. Conduct within the facility itself is additionally subject to DataOne's Facility Guide, which customer receives and confirms upon gaining access to the facility.

7.2 Without prejudice to the Acceptable Use Policy, DataOne may, upon a credible report or its own finding of illegal content or activity, deny power, network or facility access to the equipment concerned immediately and without prior notice, without this giving rise to any liability of DataOne towards customer.

## **8 Ownership, risk and insurance**

8.1 All equipment placed by customer at the facility remains the property of customer. The risk of loss, theft, misappropriation or damage to this equipment rests with customer, except to the extent caused by intent or gross negligence on the part of DataOne.

8.2 Customer must procure and maintain, at least: workers' compensation insurance in accordance with applicable law; employer's liability insurance with a limit of at least €500,000 per accident; commercial general liability insurance with a combined single limit of at least €1,000,000 per occurrence; and "all risk" property insurance covering all of customer's equipment at the facility. All policies must waive rights of subrogation against DataOne. Certificates of insurance must be provided to DataOne before equipment is brought into the facility, and coverage may not be materially changed or cancelled without at least 30 days' prior written notice to DataOne.

## **9 Access to the facility**

9.1 Access to the facility is restricted to authorized persons only. Customer obtains access in accordance with DataOne's access policy, as set out in the Facility Guide (including identification, badge and escort requirements). DataOne may refuse entry to, or remove from the facility, any person who is not authorized or who fails to comply with this policy.

9.2 DataOne may at all times take measures, including temporarily denying physical access, in the event of an emergency or a reasonable concern of damage to the facility or to the equipment of other customers.

9.3 Anyone entering the facility does so entirely at their own risk, and must follow DataOne's safety instructions and the Facility Guide at all times. DataOne is not liable for any injury, loss or damage arising from access to or presence at the facility, except to the extent resulting from intent or gross negligence on the part of DataOne, in accordance with article 10.

**At your own risk.** Entry to the facility is at your own risk, and limited to authorized, badged persons — see the Facility Guide for the full access procedure.

## 10 Liability

10.1 DataOne's total liability for direct damages, on any legal basis, is limited per event (a series of connected events counting as a single event) to the amount customer paid DataOne in the 12 months preceding the event giving rise to the damage, subject to a maximum of €50,000.

10.2 DataOne is not liable for indirect damages, including consequential loss, loss of profit, missed savings, loss of customers, loss of or damage to data, and loss due to business interruption.

10.3 The limitations in this article do not apply to damage caused by intent or willful recklessness on the part of DataOne's management, and are without prejudice to any liability that cannot be limited or excluded under mandatory law.

10.4 Any claim for damages against DataOne lapses if it is not reported to DataOne in writing within 90 days of the date customer discovered, or should reasonably have discovered, the damage. This period allows DataOne to investigate the matter and preserve relevant evidence while it is still available.

## 11 Indemnification

11.1 Customer indemnifies DataOne against all third-party claims, including reasonable legal costs, arising from or related to the content, use or processing of data by customer, or a breach by customer of these Terms and Conditions or the Acceptable Use Policy.

## 12 Force majeure

12.1 Neither party is obliged to perform any obligation if prevented from doing so by force majeure, including in any case: disruptions to electricity, internet or telecommunications facilities beyond DataOne's control, government measures, natural disasters, fire, war and terrorism.

12.2 If a force majeure situation continues for longer than sixty days, either party may terminate the agreement in writing, without this giving rise to any liability.

## 13 Confidentiality

13.1 The parties will keep confidential any information received from the other party that they know, or should reasonably know, to be confidential, and will use it only for the purpose for which it was

provided. This obligation does not apply where disclosure to a third party is required by law or a court order.

## **14 Privacy and data protection**

14.1 To the extent DataOne processes customer's personal data under the agreement, DataOne's Privacy Policy ([dataone.nl/privacy-policy](https://dataone.nl/privacy-policy)) applies. Where customer provides DataOne with the personal data of its own named contacts (such as site-access, billing or technical contacts), customer will inform those individuals that their data is processed as described in DataOne's Privacy Policy.

14.2 To the extent customer itself processes personal data on its equipment at the facility for which DataOne qualifies as a processor under the GDPR, the parties will, at customer's request, enter into a data processing agreement.

## **15 Assignment**

15.1 Customer may not assign its rights and obligations under the agreement to a third party without DataOne's prior written consent. DataOne may assign the agreement to an affiliated company or a legal successor without customer's consent, provided the services are not materially affected.

## **16 Governing law and disputes**

16.1 These Terms and Conditions and all agreements between DataOne and customer are governed by the laws of the Netherlands.

16.2 Disputes will be submitted to the competent court in the district where DataOne is established, without prejudice to either party's right to seek interim relief.

## **17 Final provisions**

17.1 DataOne may amend these Terms and Conditions. An amended version takes effect thirty days after publication on [dataone.nl](https://dataone.nl), unless an earlier date is stated.

17.2 These Terms and Conditions replace all previous versions, including the version dated 1 January 2013.