

DeltaXML Standard Licence Terms

These Licence Terms (**Terms**) are entered into between **DeltaXML Limited**, a company registered in England and Wales with company number 2528681, whose registered office is Malvern Hills Science Park, Geraldine Road, Malvern, Worcestershire, WR14 3SZ (**DeltaXML**) and the client named in the Order (**Client**).

AGREED TERMS:

1. Definitions and Interpretation

1.1. In these Terms:

Applicable Laws	means all applicable laws, statutes and regulations from time to time in force in the United Kingdom.
Charges	means all charges payable to DeltaXML by the Client under these Terms including the Licence Fee.
Confidential Information	means all information which is proprietary or confidential including, but not limited to (i) technical or commercial know-how, pricing, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed by DeltaXML to the Client and, (ii) any information concerning the business, affairs, customers, clients or suppliers of the other party.
Data Protection Legislation	means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation and for so long as and to the extent that the law of the European Union has legal effect in the UK, the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.
Documentation	means the documents provided by DeltaXML in connection with the Licensed Software, in either printed text or machine-readable form, including but not limited to the technical documentation, specifications and user manuals.
Effective Date	means the date that DeltaXML confirms in writing acceptance of the Client's Order (which may be by countersignature).
Intellectual Property Rights	means any patent, copyright, trademark and design rights (in either case registered or unregistered) format rights, topography rights, trade secrets, moral right, right of attribution or integrity right to confidentiality know-how or other intellectual or industrial property rights or proprietary rights arising under the laws of any jurisdiction (including, without limitation, all claims and causes of action for infringement, misappropriation or violation thereof and all rights in any registrations and renewals).
Licence	means the licence granted under clause 2.1.
Licence Fee	means the fee for the Licence as set out in the Order.
Licence Period	means the period for which the Licence is valid as specified in the Order.
Licensed Software	means the proprietary software applications provided by DeltaXML as set out in the Order and any fixes, patches and maintenance releases thereof.

Licence Type	means the type of licence granted to the Client as further described in the Order.
Licensed Users	means the employees and agents of the Client who use the Licensed Software, up to the maximum number specified in the Order.
Logging	means the collection of Logging Data from Licensed Software operation for the purpose of usage analysis and technical support and secure transmission to DeltaXML or retention in place on Client's environment.
Logging Data	means a record, associated with the Client account, of operating environment, operation configuration and data file characteristics, excluding the data files and any personally identifiable data.
Operating System	means any operating system that supports either Java runtime system or a common language runtime (.Net Framework) and any third-party software, both as specified in the Documentation.
Order	means the Client's signed order for Licensed Software as may be set out on the DeltaXML order form or in another format agreed by DeltaXML.
Working Day	means a day other than a Saturday or Sunday which is not a bank holiday in England.

- 1.2. Unless the context otherwise requires, words in the singular will include the plural *vice versa*.
- 1.3. A reference to a statute or statutory provision is a reference to it as replaced, extended or re-enacted from time to time.
- 1.4. A reference to writing or written includes email.
- 1.5. Clause, Schedule and paragraph headings will not affect the interpretation of these Terms.

2. Grant of Licence

- 2.1. DeltaXML grants the Client a non-exclusive, non-transferable right for the Licence Period to:
 - 2.1.1. use the Licensed Software and the Documentation for the Client's internal business purposes only; and
 - 2.1.2. to merge or embed the whole or any part of the Licensed Software in machine-readable form into a software application for use only by relevant number of Licensed Users specified in the Order in accordance with the relevant Licence Type, collectively the Licence.
- 2.2. In relation to scope of use:
 - 2.2.1. Unless expressly permitted in writing by DeltaXML, the Client will not use, or attempt to use the Licensed Software, or any of the Licensed Software's output, or permit or allow any third party, to provide a data processing or bureau service to any third party by way of trade or otherwise.
 - 2.2.2. All rights in and to any items and materials delivered by DeltaXML to the Client which are not expressly granted to the Client under clause 2.1 above are reserved to DeltaXML. Without limiting the generality of the foregoing, the Client will not, and will not assist, authorise or encourage any third party, to:
 - 2.2.2.1. reverse engineer, decompile, copy, duplicate, modify, distribute, disassemble or otherwise attempt to discover any source code or trade secrets related to the Licensed Software;

- 2.2.2.2. distribute, license, rent, sell, lease or otherwise transfer any Licensed Software or Documentation;
- 2.2.2.3. modify or create derivative works based on the Licensed Software or Documentation; or
- 2.2.2.4. remove, obscure or alter any notice of copyright, trademark or other proprietary notices present on the Licensed Software or any items or materials delivered by DeltaXML.
- 2.2.3. The Client may take copies of the Licensed Software only for back-up purposes for its own lawful use and the Client will take reasonable security measures to protect unauthorised copying of the same.
- 2.2.4. The Client will effect and maintain adequate security measures to safeguard the Licensed Software and security passwords from unauthorised access, use or copying by any person and will notify DeltaXML immediately if the Client becomes aware of any unauthorised access to, use or copying of any part of the Licensed Software by any person.
- 2.2.5. Unless the Order excludes such requirements, the Client will ensure the Licensed Software is not prevented from Logging and will provide DeltaXML with local logging files without modification on request.
- 2.2.6. The Client may use the Licensed Software only in conjunction with the Operating System and third-party software specified in the Documentation.

3. Charges and Payment

- 3.1. In consideration of DeltaXML granting the Licence, the Client will pay the Licence Fee.
- 3.2. DeltaXML will invoice the Client as set out in the Order and the Client will pay any Charges within 30 days of the date of the relevant invoice, except for any amount in respect of which there is a genuine dispute.
- 3.3. All Charges stated or referred to in these Terms:
 - 3.3.1. will be payable in pounds sterling, unless agreed otherwise in writing between the parties;
 - 3.3.2. are non-cancellable and non-refundable;
 - 3.3.3. are exclusive of value added tax or equivalent sales tax in an applicable jurisdiction, which will be added to DeltaXML's invoice(s) at the appropriate rate.
- 3.4. If the Client fails to make any payment due to DeltaXML under these Terms by the due date for payment, then, without limiting DeltaXML's remedies under clause 7, the Client will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

4. Delivery

- 4.1. DeltaXML will use reasonable endeavours to deliver to the Client a password protected means to enable the Client to download the Licensed Software within 3 Working Days of the Effective Date.
- 4.2. Where the payment of any part of the Licence Fee is due before delivery of the Licensed Software, DeltaXML may withhold delivery until payment has been received in full.

- 4.3. Unless otherwise specified in the Order, DeltaXML is not responsible for installation or configuration of the Licensed Software.

5. Intellectual Property Rights

5.1. DeltaXML's Property

- 5.1.1. The Client will not acquire in any way any title, rights of ownership, copyright, intellectual property (including but not by way of limitation each and every patent and patent application listed on <https://www.deltaxml.com/patents/>) or other Intellectual Property Rights of whatever nature in the Licensed Software and Documentation or in any copies of it. All such interests and rights are and will remain the exclusive property of DeltaXML.
- 5.1.2. The Client will incorporate or reproduce all copyright and proprietary markings in any permitted back-up or other copies of the Licensed Software or any Documentation.

5.2. Indemnity

- 5.2.1. DeltaXML will indemnify the Client against claims, actions, proceedings, losses, damages, expenses and costs arising as a result of any claim that the proper use of or possession by the Client of the Licensed Software and/or the Documentation in compliance with these Terms infringes the Intellectual Property Rights of any third party (an **IPR Claim**), provided that the Client:
- 5.2.1.1. promptly notifies DeltaXML of such IPR Claim, providing sufficient detail with regard to such IPR Claim;
 - 5.2.1.2. gives DeltaXML sole control of such IPR Claim;
 - 5.2.1.3. uses all reasonable endeavours to co-operate with DeltaXML and provide reasonable access to any relevant assets, accounts, documents and records within the power and control of the Client (at DeltaXML's expense) for the purpose of dealing with the IPR Claim;
 - 5.2.1.4. does not make any admission of liability, agreement or compromise in relation to the IPR Claim without the prior written consent of DeltaXML; and
 - 5.2.1.5. subject to DeltaXML providing security to the Client to the Client's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as DeltaXML may reasonably request to avoid, dispute, compromise or defend the IPR Claim.
- 5.2.2. In the event that any IPR Claim is made, or in DeltaXML's opinion is likely to be made, against the Client, DeltaXML may at its sole option and expense:
- 5.2.2.1. procure for the Client the right to continue using the Licensed Software in the manner permitted under these Terms;
 - 5.2.2.2. modify or amend the Licensed Software so that it becomes non-infringing;
 - 5.2.2.3. replace the Licensed Software or infringing part thereof with other non-infringing software of similar capability; or
 - 5.2.2.4. terminate the Licence immediately by notice in writing to the Client and repay to the Client any of the Licence Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Licensed Software to the date of termination) on return of the Licensed Software, Documentation and all copies of the same.

6. Warranties

- 6.1. Each party warrants that it:
 - 6.1.1. has full power to carry out its obligations under these Terms; and
 - 6.1.2. will comply with all Applicable Laws.
- 6.2. DeltaXML warrants that the Licensed Software will:
 - 6.2.1. on delivery, conform in all material respects to the Documentation; and
 - 6.2.2. not infringe any intellectual property rights of others.
- 6.3. The warranty at clause 6.2.1 is subject to the Client giving notice to DeltaXML as soon as reasonably practicable on becoming aware of a breach of warranty and, in any event, within 30 days of delivery of the Licensed Software and providing all information necessary to assist DeltaXML in resolving the defect (including a documented example of the defect or sufficient information to enable DeltaXML to re-create the defect). Where notice of a defect is validly given, DeltaXML will, at DeltaXML's sole option, either:
 - 6.3.1. repair the Licensed Software;
 - 6.3.2. replace the Licensed Software; or
 - 6.3.3. terminate the Licence immediately by notice in writing to the Client and refund any of the Licence Fee paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Licensed Software to the date of termination) on return of the Licensed Software and all copies thereof.

This clause 6.3 constitutes the Client's sole and exclusive remedy for any breach of the warranty set out in clause 6.2.1.
- 6.4. Any unauthorised modifications, use or improper installation of the Licensed Software by, or on behalf of, the Client will render all the DeltaXML's warranties and obligations under these Terms null and void.
- 6.5. If a problem is found upon investigation not to be DeltaXML's responsibility under the provisions of Clause 6.2.1, DeltaXML may charge for all reasonable costs and expenses incurred by DeltaXML in the course of or in consequence of such investigation.
- 6.6. DeltaXML does not warrant that the Client's use of the Licensed Software will meet the Customer's data processing requirements or that it will be uninterrupted or error free.
- 6.7. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms, whether by statute, common law or otherwise, are hereby excluded.

7. Liability

- 7.1. The Client acknowledges that:
 - 7.1.1. the Licensed Software has not been prepared to meet the Client's individual requirements and it is the Client's responsibility to ensure that the facilities and functions of the Licensed Software described in the applicable Documentation meet the Client's requirements; and
 - 7.1.2. the Licensed Software cannot be tested in every possible combination and operating environment, and that it is not possible to produce or maintain economically (if at all) computer programs known to be entirely error free or which operate in uninterrupted manner.
- 7.2. Limitation of Liability
 - 7.2.1. Nothing in these Terms excludes or limits the liability of either party for:
 - 7.2.2. death or personal injury caused by the other party's negligence

- 7.2.3. fraud or fraudulent misrepresentation; or
- 7.2.4. any other liability that cannot be excluded by law.
- 7.3. Except as expressly stated in clause 7.2, neither party will in any circumstances have any liability for any losses or damages which may be suffered by the other party (or any person claiming under or through the other party), howsoever arising, for:
 - 7.3.1. special damage even if that party was aware of the circumstances in which such special damage could arise;
 - 7.3.2. loss of profits;
 - 7.3.3. loss of revenue;
 - 7.3.4. loss of production;
 - 7.3.5. loss of anticipated savings;
 - 7.3.6. loss of business opportunity;
 - 7.3.7. loss of goodwill;
 - 7.3.8. wasted expenditure;
 - 7.3.9. loss or corruption of data; or
 - 7.3.10. indirect or consequential loss.
- 7.4. Subject to clauses 7.2 and 7.3, the total aggregate liability of each party, whether in contract, tort (including negligence), or otherwise arising out of or in connection with these Terms, will be limited to 125% of the Charges paid by the Client to DeltaXML under these Terms in the 12 months immediately prior to when the cause of action arose.

8. Client Obligations

- 8.1. The Client will:
 - 8.1.1. as soon as reasonably possible after discovery report to DeltaXML all suspected or known operational or functional problems with the Licensed Software or any breaches by the Client or a Licensed User of the terms of the Licence; and
 - 8.1.2. provide in a timely manner such information as DeltaXML may reasonably request to perform its obligations under these Terms and ensure that it is accurate in all material respects. Any delays attributable to the Client or the Client's failure to respond to reasonable requests by DeltaXML will extend any and all deadlines for an amount of time equal to the Client's delay.
- 8.2. The Client will keep complete, true and accurate written records in accordance with good data processing practice on the Client's copying and disclosure of the Licensed Software and details of any server or computer upon which the Licensed Software is installed as DeltaXML may from time to time reasonably require. The Client will permit DeltaXML to inspect and have access to such records (or copies of such records) for the purpose of ensuring that the Client is complying with the terms of these Terms.
- 8.3. If the Licensed Software is installed or used outside the United Kingdom, the Client will be responsible at its expense for complying with all applicable laws and regulations (including United States export laws and regulations) and obtaining any applicable licences and consents. If requested, the Client will provide DeltaXML with all reasonable assistance, at the reasonable cost of the Client, to enable DeltaXML to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any such applicable laws or regulations.

- 8.4. The Client hereby undertakes to be responsible and liable for all acts or omissions of, or by, its Licensed Users arising in connection with these Terms and to indemnify DeltaXML in respect of all losses, damages or expenses incurred by DeltaXML as a result of any unauthorised use of the Licensed Software.

9. Term and Termination

- 9.1. These Terms will commence on the Effective Date and will (subject to earlier termination under this agreement) continue in full force and effect for the relevant Licence Period, at the end of which they will automatically expire.
- 9.2. Either party may forthwith terminate the Terms by giving written notice to the other party if:
- 9.2.1. any sum owing to that party by the other party under any of the provisions of these Terms is not paid within 30 days of the due date for payment;
 - 9.2.2. that other party commits any other material breach of any of the provisions of these Terms and, if such breach is capable of remedy, fails to remedy it within 30 days after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 9.2.3. an encumbrancer takes possession, or (where that other party is a company) a receiver is appointed, of any of the property or assets of that other party;
 - 9.2.4. that other party makes any voluntary arrangement with his or its creditors or (being a company) becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
 - 9.2.5. that other party (being an individual or firm) has a bankruptcy order made against him or it or (being a company) goes into liquidation (except for the purposes of amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under these Terms);
 - 9.2.6. anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that other party; or
 - 9.2.7. that other party ceases to carry on business.
- 9.3. For the purposes of clause 9.2.2, a breach will be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that the time of performance is not of the essence).

10. Effects of Termination

- 10.1. Upon the termination or expiry of these Terms:
- 10.1.1. any sum owing by the Client to DeltaXML under any of the provisions of these Terms will be immediately payable;
 - 10.1.2. the Licence and any and all other licences granted under these Terms will immediately terminate and each party will make no further use of any property, materials and other items (including all copies thereof) belonging to the other party;
 - 10.1.3. the Client will immediately destroy or, at DeltaXML's request, return, all copies of the Licensed Software then in its possession or control in the case of destruction, certify to DeltaXML that it has done so;
 - 10.1.4. each party will forthwith cease to use, either directly or indirectly, any Confidential Information, and will forthwith return to the other party any documents in its possession or control which contain or record any Confidential Information; and

- 10.1.5. any provision of these Terms which is expressly or impliedly intended to continue in force after termination will continue in full force and effect, including clauses 3 (Charges and Payment), 5 (Intellectual Property Rights), 6 (Warranties), 7 (Liability), 10 (Effects of Termination), 12 (Confidential Information), 13 (Data Protection), 14 (Dispute Resolution), 15 (Notices and Service), 16 (General) and 17 (Applicable Laws and Jurisdiction).

11. Force Majeure

- 11.1. Neither party will be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Terms by giving 10 days' written notice to the affected party.

12. Confidential Information

- 12.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under these Terms. Confidential Information will not be deemed to include information that:
- 12.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 12.1.2. was in the other party's lawful possession before the disclosure;
 - 12.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 12.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 12.2. Subject to clause 12.4, each party will hold the Confidential Information in confidence and not make the Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of these Terms.
- 12.3. Each party will take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of these Terms.
- 12.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 12.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 12.5. Neither party will be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.6. Neither party will make or procure or permit any other person to make any press or other public announcement concerning any aspect of these Terms without first obtaining the agreement of the other party to the text of that announcement.
- 12.7. The provisions of this clause 12 will continue in force in accordance with their terms, notwithstanding the termination of these Terms for any reason.

13. Data protection

- 13.1. Both parties will comply with their respective obligations under the Data Protection Legislation.

- 13.2. The parties agree that for the purposes of this agreement, neither party will be processing personal information on behalf of the other.

14. Dispute Resolution

- 14.1. The parties will use all reasonable endeavours and attempt in good faith to resolve any dispute or claim arising out of or relating to any Order promptly through negotiations between the respective authorised representatives or other senior executives of the parties who have authority to settle the same. Any dispute, difference or claim which is not settled in fourteen (14) days of such dispute, difference or claim having been made or provided in writing by one party to the other (the **Relevant Event**) will be referred, with the agreement of the parties, to an independent third party (the **Third Party**) as DeltaXML and the Client will jointly nominate.
- 14.2. If, where the parties have agreed to use a Third Party to settle the Relevant Event, and the parties fail to nominate a Third Party within 21 days of occurrence of the Relevant Event, then the Third Party will be nominated at the request of either DeltaXML or the Client by the President for the time being of the Institute of Electrical Engineers.
- 14.3. If the parties fail to reach agreement or resolve the dispute, such failure will be without prejudice to the right of any party subsequently to refer any difference or dispute to litigation and nothing contained in the sub-clause will restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right.
- 14.4. For the avoidance of doubt, this clause 14 will not prevent either party from seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the other of the first-named party's Intellectual Property Rights.

15. Notices and Service

- 15.1. Any notice required to be given under these Terms will be in writing and sent to the other party marked for the attention of the person at the address set out for such party in the Order.
- 15.2. Any notice or communication will be sent and deemed to have been received as follows:
- 15.2.1. if sent by UK pre-paid first-class post or other next Working Day delivery service, at 9.00am on the second Business Day after posting or at the time recorded by the delivery service;
- 15.2.2. if sent by airmail or other overseas mail, at 9.00am on the tenth business day after posting; or
- 15.2.3. if sent by email on proof of transmission.

16. General

16.1. Assignment

The Client will not to assign to any third party any of its rights or obligations under these Terms without DeltaXML's prior written consent, such consent not to be unreasonably withheld. DeltaXML will be entitled to assign or sub-contract its rights and obligations under these Terms to any person but will give notice of such assignment or sub-contracting in writing to the Client.

16.2. Partnership

Nothing in these Terms is intended to, or will be deemed to, establish a partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

16.3. Entire Agreement

These Terms and the Order contains the entire agreement between the parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

Each party acknowledges that, in entering into these Terms, it does not rely on any representation, warranty or other provision except as expressly provided in these Terms, and all previous agreements, working arrangements, conditions, warranties or other terms implied by statute or common law are superseded or excluded to the fullest extent permitted by law.

16.4. Third-party Rights

No one other than a party to these Terms, their successors and permitted assignees, will have any right to enforce any of its terms.

16.5. Waiver

No failure or delay by either party in exercising any of its rights under these Terms will be deemed to be a waiver of that right, and no waiver by either party of a breach of any provision of these Terms will be deemed to be a waiver of any subsequent breach of the same or any other provision.

16.6. Severability

If any provision of these Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, these Terms will continue to be valid as to its other provisions and the remainder of the affected provision.

17. Applicable Laws and Jurisdiction

- 17.1. English law will apply to the whole of these Terms and the parties agree that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) brought against DeltaXML.
- 17.2. Nothing in this clause will limit the right of DeltaXML to take proceedings against the Client in any other court of competent jurisdiction, nor will the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.