

# Phoenix Data Recovery Client Terms and Conditions of Service

## 1. General Information

1.1. In these terms and conditions, references to "Phoenix" relates to Phoenix Data Recovery UK. The term "Client" or "Customer" relates to any person, firm, company or any other party that sends media to Phoenix Data Recovery for diagnostics or data recovery.

1.2 The word "Full" or phrase "Full Recovery", when used in relation to the process of data recovery or the amount of data recovered relates solely to the amount of data that has been able to be recovered from the media and not to the amount of data originally contained on the media.

1.3. As part of its diagnostic process, Phoenix Data Recovery agrees to use its best commercial knowledge and expertise to determine the likelihood and where possible the volume of recoverable data from the client's media.

1.4. As part of its recovery process, Phoenix Data Recovery will endeavour to retrieve or replicate the maximum amount of data from the client's media.

1.5. Phoenix Data Recovery's days of business are defined as Monday to Friday, excluding any public holidays. Business hours are defined as 9.00AM to 5.30PM. Data Recovery services may be provided outside of these hours. Any diagnostic and/or recovery services provided outside of these hours, shall be carried out at an agreed rate, on a case-by-case basis.

1.6. Phoenix Data Recovery will use all reasonable endeavours to meet relevant response times. However, failure to meet any response times is not the essence of any contractual obligation.

## 2. Estimates, Quotations and Payments

2.1. All Fixed Price Quotations offered by Phoenix Data Recovery are valid for a period of sevendays, unless otherwise stated. After this period the quotation may alter without notification.

2.2. All prices quoted by representatives of Phoenix Data Recovery are exclusive of VAT (currently 20% of the total amount payable).

2.3. Acceptance of a quotation may be given in writing, verbally in person or via telephone, facsimile or electronic mail. Phoenix Data Recovery reserves the right not to commence any recovery work until approval is given.

2.4. In the event the client decides not to proceed with the recovery of data, after approval has been given, Phoenix Data Recovery reserves the right to charge the client for any work and / or

parts used to date. This charge is at the discretion of Phoenix Data Recovery, and may be equal to, but not exceed the total approved amount for the recovery process.

2.5. The client understands that payment is due in full upon completion of the data recovery process and prior to release of data and/or original media (whether shipped, collected or downloaded), unless by special previous arrangement. Payment can be made via Credit/ Debit card (VISA, MasterCard, American Express, Switch, Maestro, Electron etc), company or personal cheque or bank transfers. On occasions Phoenix Data Recovery reserves the right to express the payment must be cleared in full before the data is released to the client.

2.6. Phoenix Data Recovery reserves the right to charge interest and /or administration fees for any payments outstanding after the specified due date. The current interest rates charged by Phoenix Data Recovery is 1.5% for each month the payment is outstanding. The current rate charged for administration are as follows: late payment £75 for each calendar month outstanding, £10 for each telephone communication regarding outstanding balance, £30 for each letter issued regarding outstanding balance and £10 for a copy invoice. All amounts listed exclude VAT.

### **3. Confidentiality**

3.1. As part of its confidentiality policy, Phoenix Data Recovery agrees not to disclose any / all information or data files supplied with, stored on, or recovered from client equipment except to employees or agents of Phoenix Data Recovery subject to confidentiality agreements or as required by law, without the consent of the client.

3.2. Phoenix Data Recovery agrees to only use authorised data recovery engineers, and that all media supplied to Phoenix Data Recovery will be stored in a secure manner at one of its premises. The client understands that the location of storage may not be the same as the location to which the media was originally shipped to.

3.3. All data recovered from a client's media is stored on secure servers in accordance with the Data Protection Act 1998.

### **4. Diagnostics and Recovery Processes**

4.1. All diagnostic reports are provided to the client via telephone or electronic mail, unless otherwise agreed by a representative of Phoenix Data Recovery.

4.2. Due to the nature of data recovery, our technicians may be required to carry out physical work on the media. The client understands that the media / data / equipment you are making available to Phoenix Data Recovery is (a) already damaged, (b) that data recovery efforts may result in further damage, and (c) that your media and/or equipment warranties may become void and that Phoenix Data Recovery is not responsible for this or any other type of damage.

4.3. The client is aware that on occasions, Phoenix Data Recovery may be required to use additional media to continue with the diagnostic phase and / or carry out its recovery efforts. Examples of this include, but are not limited to, spare parts for disk drives and specific adaptors or connectors. Phoenix Data Recovery reserves the right to charge the client for such additional media at an agreed cost.

4.4. On rare occasions, Phoenix Data Recovery may require the client to cover some of the cost in attempting the recovery. This only applies when the recovery is complex or when severe damage has occurred. However, these are always provided as part of a no obligation, fixed price quotation, but are not offered as part of Phoenix Data Recovery's "no recovery, no fee" service.

4.5. Phoenix Data Recovery agrees that any payment for a recovery will only be processed in the event that data is successfully recovered from the client's media. The client understands that due to the complex nature of data recovery, it is not always possible to recover all the information from the client's media. Phoenix Data Recovery makes provision for the completeness, relevance or importance of the data recovered for the client unless otherwise agreed in writing by Phoenix Data Recovery and the client.

## **5. Performance, Delivery & Carriage**

5.1. Phoenix Data Recovery agrees to return all recovered data on suitable media. Examples of this include but are not limited to CD-ROM, DVD-r or a replacement hard drive. As part of its standard data recovery service, Phoenix Data Recovery currently returns a maximum of 3GB of data on CDRom and 30GB of data on DVD-r. Phoenix Data Recovery reserves the right to refuse or charge the client an agreed amount for returning data on these forms of media when the recovered data exceeds these limits. The client must pay an agreed amount for any replacement media and this amount is in addition to the costs agreed for the data recovery service unless otherwise agreed in writing by a representative of Phoenix Data Recovery.

5.2. All replacement media have a warrantee period of seven calendar days from the date of dispatch from one of Phoenix Data Recovery offices during which time Phoenix Data Recovery will replace or repair any goods deemed to be faulty. After that period, any warranties lay solely with the manufacturer of the goods and NOT with Phoenix Data Recovery. After three working days, any data recovery needed from any return media shall be charged at Phoenix Data Recovery's standard rate.

5.3. All data recovered by Phoenix Data Recovery is returned to the client via a next day traceable service. Examples of this include, but are not limited to Royal Mail Special Delivery, Business Post, UPS, TNT or City Link next day delivery. Other arrangements for return of client's data, may be arranged; however, on occasions, Phoenix Data Recovery reserves the right to charge the client for the postal service provided and any associated administration fees. This charge is in addition to the charge agreed for the data recovery process.

5.4. Phoenix Data Recovery holds no responsibility for delays caused as a result of the postal network. In these circumstances no compensation will be given for loss of profits, inconvenience etc unless previously agreed by Phoenix Data Recovery.

5.5. The client agrees to inspect or to procure to inspect the goods delivered at the earliest opportunity after delivery or attempted delivery and, in any event, within five calendar days of delivery or attempted delivery. Any claims for shortfall in delivery of goods, or claims that the goods do not comply with the order agreed with Phoenix Data Recovery must be notified in writing within seven calendar days of delivery. Claims made outside of this time period may only be resolved at the discretion of Phoenix Data Recovery.

5.6. Phoenix Data Recovery will retain a copy of your recovered data for a period of seven days from the date of dispatch. During this period Phoenix Data Recovery will answer any queries concerning the recovered data and, if required, provide further copies. On occasions, with the client's consent, Phoenix Data Recovery may retain a copy of your recovered data and/or digital image beyond this point. In circumstances such as these, Phoenix Data Recovery reserves the right to charge a fee for duplicate copies of data, data storage, management and security.

5.7. The client and Phoenix Data Recovery agree that the sole and exclusive remedy for unsatisfactory work or data shall be, at Phoenix Data Recovery's option, additional attempts by engineers of Phoenix Data Recovery to recover satisfactory data or to refund the amount paid by the client in full or part. The said parties acknowledge that the price of Phoenix Data Recovery's services could be much greater if Phoenix Data Recovery undertook more extensive liability.

5.8 All media sent to Phoenix Data Recovery for data recovery may be retained within one of its international offices for a period of up to fourteen days after completion of the data recovery service. As per our 'Return Drive Policy' you may request the return of your media within 28 days of us receiving your drive. The client understands that the delivery timeframes provided are calculated from the date of recovery plus fourteen days. Please see our Return Drive Policy for full details.

5.9 The client understands that all media which is returned via our free return service is provided by standard postal service and this service is non-traceable, Phoenix Data Recovery holds no responsibility for any media lost or damaged within the postal network. The client understands that this is a 21 day service, calculated as indicated in 5.8. Our Return Drive Policy can be viewed here: [http://www.dataphoenix.co.uk/returnDrives/phenixuk\\_return\\_drive\\_policy.pdf](http://www.dataphoenix.co.uk/returnDrives/phenixuk_return_drive_policy.pdf)

5.10. The client understand that Phoenix Data Recovery does not offer any guarantees or warranties of any kind and that the extent of any Phoenix Data Recovery's liability to the client is strictly limited to the fees the client pays Phoenix Data Recovery for its data recovery service.

## **6. Data Integrity**

6.1 The client accepts that Phoenix Data Recovery will not examine the contents of any file contained on the media supplied to them.

6.2 Phoenix Data Recovery gives an integrity percentage of any data recovered. This is an estimate only and is derived using specialist software that performs a file signature verification process. This is where the recovered files signatures are matched against their extension. This process does not guarantee the level of integrity and may vary depending on various factors including, but not limited to, the file type and whether or not it is encrypted. The percentage given is an estimate only.

6.3 Phoenix Data Recovery accepts no responsibility or liability whatsoever for the contents, integrity, functionality, corruption or usefulness of the data recovered.

6.4 Whilst every effort is made to recover as much data as possible from any media received and any specific files requested by the client the recovery process is such that it is not specific and the sale of data is generic and based purely on the amount of data recovered and the labour in recovering that data. Therefore, should the client wish to know what files have been recovered they should request a file list from their account manager in writing or by email. This is the client's responsibility and a file list will not be provided unless requested from Phoenix Data Recovery in writing or by email by the client. The file list shows the files recovered. Phoenix Data Recovery gives no guarantee as to the integrity of the data shown on the file list or any other data recovered.

## **7. Legality**

7.1. The client agrees that all media and its content provided to Phoenix Data Recovery are legal and the lawful possession of the client and that the client has the legal right to request data recovery services, as described under the Laws of England and Wales.

These Terms and Conditions were last modified on 4<sup>th</sup> January 2011