

## TERMS AND CONDITIONS FOR ONLINE SALES TO BUSINESS CUSTOMERS

These are the legal terms and conditions (**Terms**) on which we sell any of the File Stream software products & licence keys (**Products**) and provide any of the services (**Services**) listed on our website (**our site**) to you as a business customer.

These Terms will apply to any contract between us for the sale of Products or the delivery of Services to you (**Contract**) however please note that the Filestream Software Licence Agreement (the **Software Licence**) applies to your purchase of any File Stream software products. If there is any conflict with these terms the terms of the Software Licence will prevail. You can find the Software Licence at:

<https://filestreamsyste.../2019/03/Filestreams-Licence-Agreement-2018.pdf>

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## 1. INFORMATION ABOUT US

- 1.1 We operate the website [www.filestreamsyste.ms.co.uk](http://www.filestreamsyste.ms.co.uk). We are FileStream Ltd, a company registered in England and Wales under company number 05138759 and with our registered office at 3 Kitsmead Lane Longcross Chertsey Surrey KT16 0EF. Our VAT number is 912 9286 14.
- 1.2 Contacting us. You may contact us by telephoning our customer service team at +44 (0)118 989 3771 or by e-mailing us at [sales@filestreamsyste.ms.co.uk](mailto:sales@filestreamsyste.ms.co.uk). If you wish to give us formal notice of any matter in accordance with these Terms write to us at FileStream Ltd 3 Kitsmead Lane Longcross Chertsey Surrey KT16 0EF

## 2. OUR SERVICES

- 2.1 We will:
  - (a) provide in all material respects the services and deliverables in accordance with the description and specification (together the **Specification**) of those services and deliverables (together the **Services**) as are confirmed in writing by us to you;
  - (b) use all reasonable endeavors to meet any performance dates specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
  - (c) have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and we shall notify you in any such event; and
  - (d) warrant to you that the Services will be provided using reasonable care and skill.

## 3. YOUR OBLIGATIONS IN RELATION TO OUR SERVICES

- 3.1 You shall:
  - (a) ensure that the terms of your order and any information you provide in the Specification are complete and accurate;
  - (b) co-operate with us in all matters relating to the Services;
  - (c) provide us, our employees, agents, consultants and subcontractors, with access to connect remotely to your computer equipment as reasonably required by us;
  - (d) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - (e) prepare your computer equipment for the supply of the Services;

(f) obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and

3.2 If our performance of any of its obligations under the Contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Default**):

- (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy your Default, and to rely on your Default to relieve it from the performance of any of its obligations to the extent your Default prevents or delays our performance of any of its obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of its obligations as set out in this clause 3.2; and
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from your Default.

#### **4. BUSINESS CUSTOMER ACKNOWLEDGEMENTS**

4.1 You confirm that you have authority to bind any business on whose behalf you use our site to purchase Products or Services.

4.2 These Terms and our Privacy Policy, constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

4.3 You acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms or any document expressly referred to in them or our Privacy Policy. You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

#### **5. HOW THE CONTRACT IS FORMED BETWEEN YOU AND US**

5.1 Our site will guide you through the steps you need to take to place an order with us. Our order process allows you to check and amend any errors before submitting your order to us. Please take the time to read and check your order at each page of the order process.

5.2 After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 5.3.

5.3 In relation to:

- (a) Products, we will confirm our acceptance to you by sending you an e-mail that confirms that the File Stream software & licence key is available to download and containing a link to effect the download. The contract will be in force when you click on the link to effect the download.
- (b) Services, we will confirm our acceptance to you by sending you an e-mail that confirms that the Specification is agreed and the Contract between us will only be formed when we send you an agreed Specification.

5.4 If we are unable to supply you with a Product or Service, for example because we can no longer provide the Service or a Product is not in stock or no longer available, we will inform you of this by e-mail and we will not process your order. If you have already paid for the Products, we will refund you the full amount as soon as possible. If you have already paid for the Services, we will refund you the full amount less the cost of any Services that were provided, as soon as possible.

## 6. OUR RIGHT TO VARY THESE TERMS

- 6.1 We amend these Terms from time to time. Please look at the top of this page to see when these Terms were last updated and which Terms were changed.
- 6.2 Every time you order Products or Services from us, the Terms in force at the time of your order will apply to the Contract between you and us.
- 6.3 We may revise these Terms as they apply to your order from time to time to reflect changes in relevant laws and regulatory requirements or to accommodate changes to the Products or Services.

## 7. DELIVERY OF PRODUCTS

- 7.1 **If the products are one-off services.** The estimated completion date for the services is as told to you during the order process.
- 7.2 **If the product is a one-off purchase of digital content.** We will make the digital content available for download by you as soon as we accept the order.
- 7.3 **If the products are ongoing services or a subscription to receive digital content.** We will supply the services or digital content to you until either the services are completed or the subscription expires (if applicable) or either party ends the contract as described in clause 12.

## 8. PRICE OF PRODUCTS

- 8.1 The prices of the Products will be as quoted on our site at the time you submit your order.

8.2 Prices for our Products may change from time to time, but changes will not affect any order you have already placed.

8.3 We will pass on changes in the rate of VAT. If the rate changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.

8.4 It is always possible that, despite our reasonable efforts, some of the Products on our site may be incorrectly priced. We will normally check prices as part of our dispatch procedures so that:

- (a) where the Product's correct price is less than the price stated on our site, we will charge the lower amount when dispatching the Products to you; and
- (b) if the Product's correct price is higher than the price stated on our site, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your order. We will not process your order until we have your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing. However, if we mistakenly accept and process your order where a pricing error is obvious and unmistakable and could reasonably have been recognised by you as a mispricing, we may cancel supply of the Product and refund you any sums you have paid.

## **9. HOW TO PAY FOR PRODUCTS AND SERVICES**

9.1 You can only pay for Products using direct debit or invoice.

## **10. OUR LIABILITY**

10.1 We only supply the Products for internal use by your business, and you agree not to use the Product for any resale purposes.

10.2 Nothing in these Terms limits or excludes our liability for:

- (a) death or personal injury caused by our negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (d) defective products under the Consumer Protection Act 1987.

10.3 Subject to *clause 10.2*, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) any loss of profits, sales, business, or revenue;

- (b) loss or corruption of data, information or software;
- (c) loss of business opportunity;
- (d) loss of anticipated savings;
- (e) loss of goodwill; or
- (f) any indirect or consequential loss.

10.4 Subject to *clause 10.2*, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 120% of the price of the Products or Services.

10.5 Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Products or Services. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Products or Services are suitable for your purposes.

**11. EVENTS OUTSIDE OUR CONTROL**

11.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 11.2

11.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

11.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Products to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

11.4 You may cancel a Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel we will refund the price you have paid.

## 12. TERMINATION OF A CONTRACT FOR SERVICES

12.1 Without limiting its other rights or remedies, either party may terminate the Contract for Services with immediate effect by giving 1 month written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (e) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (f) the other party's financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (g) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

12.2 Without limiting its other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, we may suspend provision of the Services under the Contract or any other contract between you and us if you become subject to any of the events listed in clause 12.1(b) to clause 12.1(g) or we reasonably believe that you are about to become subject to any of them, or if you fail to pay any amount due under this Contract on the due date for payment.

## 13. CONSEQUENCES OF TERMINATION OF CONTRACT FOR SERVICES

13.1 On termination of the Contract for Services for any reason:

13.2 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

13.3 clauses which expressly or by implication survive termination shall continue in full force and effect.

**14. COMMUNICATIONS BETWEEN US**

14.1 When we refer, in these Terms, to "in writing", this will include e-mail.

14.2 Any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service or e-mail.

14.3 A notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or if sent by e-mail, one Business Day after transmission.

14.4 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.

14.5 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**15. OTHER IMPORTANT TERMS**

15.1 We may transfer our rights and obligations under a Contract to another organisation, but this will not affect your rights or our obligations under these Terms. We will always notify you in writing or by posting on this webpage if this happens.

15.2 You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

15.3 This Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

15.4 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

15.5 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

- 15.6 A Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 15.7 We both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).