



# FLUENTBLU

## FLUENTBLU LTD – Terms and Conditions of Sale

In these conditions

- Conditions:** Are these terms and condition of trade, any special terms on the face of the Vendor's Tender or the Vendor's written acceptance of the Buyer's order and the terms and Conditions of any supplier of the Vendor, copies of which shall be made available on request (as the case may be).
- Contract:** Is the contract for the purchase and sale of the Goods.
- Buyer:** Is the person who accepts a tender of the Vendor for the sale of the Goods or whose order for the Goods is accepted by the Vendor.
- Goods:** Are the Goods (including any instalment of the Goods or any parts for them), which the Vendor is to supply.
- Tender:** Is a Tender made by the Vendor's authorised representative and includes any tender.
- Vendor:** Fluentblu Ltd, First Floor Offices, 188-190 Bedford Road, Kempston, Bedford, MK42 8BL.

### 1 BASIS FOR THE SALE

1.1 All goods are sold subject to the Vendor's prior approval of the Buyer's credit and to the Conditions, which shall govern the Contract to the exclusion of any other Terms and Conditions subject to which any Tender is accepted or purported to be accepted, or any order is made or purported to be made, by the Buyer.

1.2 No variation to these Conditions shall be binding unless agreed in writing by a Director of the Vendor.

1.3 The Vendor's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Vendor in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or a right to rescind the Contract for breach of any such representations which are not so confirmed (unless such representations were fraudulently made).

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1.4 Any advice or recommendation given by the Vendor or its employee or agents to agents to the Buyer or its employees or agent as to the storage, application or use of the goods which is not confirmed in writing by the Vendor is followed or acted upon entirely at the Buyer's own risk and, accordingly, the Vendor shall not be liable for such advice or recommendation which is not so confirmed.

1.5 Any typographical, clerical or other error or omission in any sales literature, tender, price list, acceptance of offer, invoice or other document or information issued by the Vendor shall be subject to correction without any liability on the part of the Vendor.

## 2 CONTRACT

2.1 The Vendor's tender shall be deemed to be an invitation to the Buyer to make an offer to purchase the Goods subject to the Conditions and such offer by the Buyer whether or not in the form of an order shall not constitute a valid Contract until accepted by the Vendor's authorised representative. The Vendor's tender shall automatically lapse after seven days of the date of the tender unless extended in writing by a director of the Vendor.

2.2 The Buyer is responsible for ensuring the accuracy of the terms of any order and for giving the Vendor any necessary information (which shall include the tasks which the goods shall be required to perform) within a sufficient time to enable the Vendor to perform the contract.

## 3 DELIVERY

3.1 Unless otherwise stated on the Vendor's written acceptance of order, orders will be subject to a delivery surcharge. Delivery will be made at the address stipulated by the Buyer, the details of which the Buyer warrants. Assistance may be required with off-loading. Incorrect details supplied may result in delivery delay, and possible additional charges.

3.2 Any dates or times given for delivery of the Goods are approximate only and the Vendor shall not be liable for any loss or damages whatsoever, which may arise from delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. In particular the Vendor does not accept any liability that a delivery will occur so that any further services may be performed either by the Vendor or the Buyer on that date.

3.3 The Goods may be delivered in instalments, in which case each delivery shall constitute a separate Contract, and failure by the Vendor to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

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3.4. If the Buyer fails to take delivery of the Goods or fails to give the Vendor adequate delivery instructions, including ensuring the completion and return to the Vendor in a timely manner of any Site Survey Form, at the time stated for the delivery then the Vendor may:

3.4.1 Store the Goods until actual delivery and charge the Buyer for the costs (including insurance) of storage and redelivery; or

3.4.2 Sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer for the excess over the sums owing by the Buyer or charge the Buyer for any shortfall.

3.5 For certain items which have special delivery requirements a Site Survey Form must be completed and returned to the Vendor with sufficient time to analyse and if necessary request further information before committing to an estimated delivery date. Failure to deliver due to the non return of the form or the presence of incorrect information on the form shall not amount to a breach of contract and the Vendor reserves the right to treat the delivery as completed, and to issue an invoice accordingly, or to treat the goods as returned unwanted, and levy a restock charge. If extra delivery requirements or equipment become apparent after the receipt of the Site Survey form, then the Vendor reserves the right to issue an amended delivery date, and an invoice correction for the additional costs.

3.6 Any damage to packaging must be recorded on the Vendor's delivery acknowledgement documentation on delivery, and any damage or shortage of the contents must be advised in writing (email, fax) within one business day following delivery. No claims for damaged goods on delivery will be accepted unless the delivery agents paperwork has been clearly marked as "Damaged on Delivery" If in doubt contact the Vendors' Customer Services on 01234 843300 at time of delivery, with the delivery driver present. Email photographs of all sides of the packaging and damage to [sales@fluentblu.co.uk](mailto:sales@fluentblu.co.uk)

3.7 Claims for damaged goods or shortages within undamaged packages will only be accepted within two business days after delivery. Damaged packages should be checked immediately, and the delivery documentation marked as "damaged".

3.8 On delivery it is the Buyer's responsibility to ensure that the total number of packages signed for is the same as the number of packages delivered. Claims for delivery shortage will not be accepted once the delivery acknowledgement documentation is signed.

## 4 PRICE

4.1 All prices are quoted subject to receipt of order within 7 days or any other period specified in writing by an authorised signatory of the Vendor, and to any increase in price, which may occur as a result of factors falling outside the control of the Vendor.

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4.2 VAT and any other duties or taxes where applicable will be added to all invoices at the rate ruling at the date of despatch.

4.3 The Buyer shall pay the Vendor's invoice without any deduction or set off. Time for payment shall be of the essence.

4.4 Tenders may be withdrawn at any time prior to acceptance of order.

4.5 Invoicing errors may be corrected by the Vendor at any time.

## 5 CANCELLATION

No order which has been acknowledged by the Vendor may be cancelled by the Buyer except with the agreement in writing of the Vendor and on condition that the Buyer shall indemnify the Vendor in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Vendor as a result of cancellation.

## 6 WARRANTY AND RETURN OF GOODS

6.1 The Vendor undertakes following delivery, for the duration of the Warranty Period, as stipulated in the Vendor's tender, to repair or replace at the option of the Vendor, any Goods which are shown to be defective in materials or workmanship. The repair or replacement shall include but not be limited to any adjustments or parts replacement. The vendor may choose to credit the price of such goods at its option.

6.2 Goods not required by the Buyer, wrongly ordered or ordered in error may only be returned to the vendor with prior written approval, and the issue of an RMA (Return Material Authorisation) number. In these cases the Vendor reserves the right to charge a fee of 15% of the total list price of the Goods. Goods must be returned carriage paid to the Vendor, in original unmarked packaging, complete and unused, and with the RMA number clearly attached to the outside of the packaging in a non-destructive manner.

6.3 Any Goods whatsoever returned to the Vendor without prior consent or RMA number will not be accepted by the Vendor and will be returned to the Buyer freight collect. The Vendor shall specifically not accept the Goods unless they include the original undamaged packaging and are complete. All Goods returned must be returned carriage, duty, and taxes paid to one of the Vendor's approved service points (a list of which is available from the Vendor on request) failing which the Vendor shall be under no obligation to credit, repair or to replace the defective Goods.

6.4 The Vendor shall furthermore be under no obligation to repair or to replace defective Goods if (a) the Buyer has failed to adhere strictly to the terms of payment provided for or referred to herein for the Goods or in relation to any other contracts between the Vendor and the Buyer or (b) the Buyer has executed or attempted to execute repairs or alterations to the Goods which are not authorised by the Vendor or has failed in any other respect to adhere strictly to the terms hereof or (c) the Goods are damaged by accident, misuse, negligence, wilful act of default or incorrect use of

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the Goods (in which case the Buyer agrees to pay the Vendors then prevailing rate charged for replacement or repair of the Goods) (d) there has been failure to maintain the Goods in accordance with the manufacturers recommended maintenance procedures.

6.5 Notwithstanding the foregoing provisions of this clause, the Vendor shall have the option at all times in lieu of effecting repairs, to provide the Buyer with equivalent replacement Goods within a reasonable time.

6.6 For software, the Vendor warrants to the Buyer's original end user only:

a) for 90 days from such end user's purchase date that the software portion of the product, if used as authorised in accordance with Supplier specifications, will perform in material accordance with the specifications without significant errors that make it unusable.

b) For 12 months from such end user's purchase date that the hardware portion of the products, if used as authorised in accordance with the Supplier's specifications, will not have significant defects in materials or workmanship that make the product unusable or, c) The vendor's original Suppliers warranty if different.

d) The Vendor makes no warranty or representation that the products will meet any end user's specific requirements, that the operation of the products will be secure, uninterrupted or error free or that all defects in the products will be corrected.

## 7 PAYMENTS AND INTEREST

7.1 Payment shall be made in full prior to despatch of the Goods unless the Buyer has a credit account with the Vendor. If the Buyer has a credit account with the Vendor, payment shall be made on the 30<sup>th</sup> day after the date on which the Vendor issues its invoice ("Invoice Date"). In the event that the invoice is not paid by the Buyer within 30 days from the Invoice Date then the Vendor shall charge interest on late payments from the Invoice Date pursuant The Late Payment of Commercial Debts (Interest) Act 1998.

7.2 If the Buyer has a credit account with the vendor, the credit limit as determined from time to time by the Vendor shall not be exceeded without the written consent of the Vendor's authorised representative. The credit limit will be reviewed at least annually and adjusted accordingly. Extra information may be required to assist with the granting of a credit limit, eg management figures.

7.3 The Vendor reserves the right to charge a 2% handling charge for all Credit Card Purchases.

7.4 Time is of the essence in reporting to the Vendor of any query that the Buyer has with any invoice submitted to them by the Vendor. These should be reported in writing to the Vendor's accounts department within 7 days of the date of invoice.

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## 8 RETENTION OF TITLE AND RISK

8.1 The **risk** in the Goods shall pass to the Buyer on delivery, and from that time, the Buyer shall be responsible for the care and protection of the Goods and shall take out at its own expense adequate and comprehensive all risks cover on the Goods (with a note of the Vendor's interest endorsed thereon until the Vendor has received payment of the price in full).

8.2 Notwithstanding delivery and the passing of risk in the Goods, title in the Goods (including full legal and beneficial ownership) shall not pass to the Buyer until the Vendor has received (in cash or cleared funds) payment in full for all Goods supplied by the Vendor to the Buyer under all contracts between them.

Payment of the full price for the Goods shall include the amount of any interest or other sums payable under the contracts between the Vendor and the Buyer.

8.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Vendor's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Vendor's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Vendor for the proceeds of the sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

8.4 Until such time as the property in the goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Vendor shall be entitled at any time to require the Buyer to deliver up the Goods to the vendor and, if the Buyer fails to do so forthwith, to enter upon any premises or vehicles of the Buyer or any third party where the Goods are stored and repossess the Goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Vendor.

8.6 All software is sold with the understanding that all right, title and interest, including without limitation all intellectual property rights in and related to the products and all improvements, derivative works and modifications thereof, are solely and shall remain with the original supplier and its licensors. No permission is granted to copy, make copies or, translate, localise, disassemble, decompile, reverse, engineer, attempt to discover source code of, modify, create derivative works, change any part, including without limitation the documentation, packaging, notices, trademarks, except as expressly permitted under Section 50A-50C of the Copyright Designs and Patents Act 1988, or prior agreed in writing.



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## 9 TERMINATION

9.1 The Vendor shall have the right immediately to terminate, or suspend any further deliveries under, the Contract or any other Contract with the Buyer without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payment notwithstanding any previous agreement or arrangement to the contrary if:

9.1.1 The Buyer fails to make any payment when due or breaches any provision of the Contract.

9.1.2 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Vendor reasonably apprehends that any of these events is about to occur in relation to the Buyer.

9.2 The right of termination given by Clause 9.1 shall be without prejudice to any other right or remedy of either party in respect of any breach committed under the terms of this Agreement.

## 10 DEFAULT

The Buyer shall fully and effectively **indemnify** the Vendor against the total expense to the Vendor arising out of the Buyer's **breach** or **breaches** of these Conditions of sale. Such expense shall include (without limitation) (1) all expenses incurred by the Vendor in sourcing and or building the Goods (2) all court fees (3) all amounts payable to the Vendor's professional advisers (payable on an indemnity basis) in pursuing claims against the Buyer for breach or breaches of the Conditions and for enforcing any judgement/s and/or order/s (4) all amounts payable to the Vendor's insurers and/or debt recovery agents, in each case including anticipated sums payable by the Vendor only after payment of any sums from the Buyer.

## 11 CLAIMS

11.1 The Vendor shall not be liable for any increased costs, expenses, economic loss, loss of profit, goodwill, business, contracts, revenues or anticipated savings or any type of special indirect or consequential loss (including loss or damage suffered by the Buyer as a result of action brought by a third party) even if such loss was reasonable foreseeable or the Vendor had been advised of the possibility of the Buyer incurring the same. In any event, the Vendor's entire liability under any Contract shall be limited to damages of an amount equal to the price of the Goods.

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The Vendor does not attempt to limit liability for the personal injury or death caused by its negligence or the negligence of its employees or agents.

11.2 Subject to the provisions of the **Unfair Contract Terms Act 1977**, all warranties, Conditions representations or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.3 To the extent the law does not permit the liabilities concerned to be excluded and save as otherwise expressly provided, the Vendor's entire aggregate liability for all claims shall be limited to damages of an amount equal to the price of the Goods.

## 12 FORCE MAJEURE

The Vendor shall (1) in any event not be liable for loss or damage and (2) be entitled to cancel or rescind the Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond the Vendor's control including (but not limited to) the delays or default of any sub-contractor or supplier, war or civil conflict, strike, lock-out or other, trade disputes, accident to plant or machinery, Acts of God including abnormal weather conditions, riot, terrorism, epidemic, quarantine, government action, or shortage of materials or labour.

## 13 GENERAL

13.1 The Vendor may assign its rights and obligations. The Buyer may not assign its rights and obligations.

13.2 No delay or failure by the Vendor in enforcing any provision of the Contract shall constitute a waiver of that provision or any other provision. No waiver by the Vendor of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any provision. No waiver by the Vendor shall be effective unless in writing.

13.3. If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provision of these Conditions and the remainder of the provision in question shall not be affected.

13.4 These Conditions and the Vendor's acceptance of order constitute the entire agreement between the Vendor and the Buyer concerning the supply of the Goods and replace and supersede any prior arrangement, understanding, warranty or representation (other than fraudulent misrepresentation)

13.5 The Contract shall be governed by the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

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