

Terms of Service

These Terms of Service ("**Terms**") are intended to explain the basis on which Fluidly Limited ('**we**', '**us**' or '**our**'), provide cash flow predictions, automated invoicing procedures on behalf of clients, benchmarking performance and keeping records as further detailed on the Site ('**Services**').

These Terms and our [Privacy Policy](#) govern your use of the Services. Your registration for an account and use and continued use of the Services constitutes acceptance of these Terms, which are binding.

1. Interpretation

The following definitions and rules of interpretation apply in these Terms.

1.1. Definitions.

Applicable Laws	all applicable laws, statutes, regulations and codes from time to time in force, including all Data Protection Legislation.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Business Hours	the period from 9.00 am to 5.00 pm on any Business Day.
Charges	the fee payable for the Services, as detailed on the Site and in the description of your subscription type.
Data Controller	has the meaning set out in the Data Protection Legislation.
Data Processor	has the meaning set out in the Data Protection Legislation.
Data Protection Legislation	shall mean the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/58/EC (ePrivacy Directive) and/or the General Data Protection Regulation (EU) 2016/679 (GDPR) and/or any corresponding or equivalent national laws or regulations
Data Subject	has the meaning set out in the Data Protection Legislation.
Deliverables	any information that we provide to you, inclusive of cash flow predictions using data provided by you.
GDPR Date	25 May 2018
Insolvency Event	means the passing of a resolution or making of an order for the winding up of a party (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations under these Terms of the relevant party), or a party becomes subject to an administration order or an administrator, receiver or administrative receiver is appointed over all or part of the other's undertaking and assets, or a party becomes unable to pay its debts or becomes insolvent (within the meaning of

the Insolvency Act 1986) or makes, or proposes to make any arrangement or composition with its creditors.

Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Personal Data	has the meaning set out in the Data Protection Legislation.
Processing/ process	have the meaning set out in the Data Protection Legislation.
Site	the online site available at fluidly.com
VAT	value added tax chargeable under the Value Added Tax Act 1994.
Virus	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Your Materials	all documents, information, items and materials in any form, whether owned by you or a third party, which are provided by you to us in connection with the Services, including the items provided pursuant to clause 3.1.2.

1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of these Terms.

1.3. A reference to:

1.3.1. a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.3.2. writing or written includes email.

1.4. Any words following the terms **including, include, in particular, for example** or any

similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. Our responsibilities

- 2.1. We shall provide the Services, and deliver the Deliverables to you, in accordance with these Terms in all material respects and according to your subscription type.
- 2.2. We do not warrant that your use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained through the Services will meet your requirements.
- 2.3. We are not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

3. Your obligations

3.1. You shall:

- 3.1.1. co-operate with us in all matters relating to the Services;
- 3.1.2. provide to us in a timely manner all information and materials in any form (whether owned by you or a third party) reasonably required by us in connection with our provision of the Services and ensure that they are true, accurate and complete;
- 3.1.3. comply with all Applicable Laws;
- 3.1.4. ensure any information you provide to us (either through your third party accounting software or online platform) is not defamatory, discriminatory, offensive, obscene, indecent, harmful, threatening, or otherwise unlawful or objectionable;
- 3.1.5. be responsible for procuring and maintaining your network connections and telecommunications links to access the Site and Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet;
- 3.1.6. ensure that the users are aware of and comply with these Terms of Service; and
- 3.1.7. use all reasonable endeavours to prevent any unauthorised access to, or use of the Services and Site, including ensuring that all usernames and passwords required to access the Service are kept secure and confidential, and in the event of any such unauthorised access or use, promptly notify us.

3.2. You shall not:

- 3.2.1. unless required by any applicable law or to the extent expressly permitted under these Terms of Service:
 - 3.2.1.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Site or any software used to provide the

Services in any form or media or by any means; or

- 3.2.1.2. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Site or any software used to provide the Services;
 - 3.2.2. access, store, distribute or transmit any Viruses during the course of using the Services;
 - 3.2.3. access all or any part of the Services and/or Site in order to build a product or service which competes with the Services and/or Site;
 - 3.2.4. reproduce, duplicate, copy or re-sell any part of our Site or Services in contravention of the provisions of our Terms of Services; or
 - 3.2.5. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party;
 - 3.2.6. access without authority, interfere with, damage or disrupt any part of our Site.
- 3.3. If our performance of our obligations under these Terms is prevented or delayed by any act or omission of by you, your agents, subcontractors, consultants or employees, then, without prejudice to any other right or remedy we may have, we shall be allowed an extension of time to perform our obligations equal to the delay caused by you and we shall not be in breach of these Terms.
- 3.4. We reserve the right to disable your access to the Services, Site or Software if you breach any of the provisions of this clause 3.

4. Charges and payment

- 4.1. In consideration of the provision of the Services by us, you shall pay the Charges, as described on our Site in the description of your subscription type.
- 4.2. We may increase the Charges on an annual basis with effect from each anniversary of the date of these Terms in line with the percentage increase in the Retail Prices Index in the preceding 12-month period, and the first such increase shall take effect on the first anniversary of the date of these Terms and shall be based on the latest available figure for the percentage increase in the Retail Prices Index.
- 4.3. If you purchase these Services directly from us, we shall invoice you, by email to the email address provided by you, for the Charges at the start of each period, as specified in the description of your subscription type on our Site, for Services to be performed during that period. If you purchase the Services through a third party you will be responsible for paying the Charges to that third party in accordance with any contractual arrangement you have with this third party.
- 4.4. Without prejudice to any other right or remedy that you may have, if you fail to pay us any sum due under these Terms on the due date, as specified on the invoice, We shall be entitled to claim interest under any applicable law or statute, for example, the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time). You shall pay the interest together with the overdue amount.
- 4.5. All sums payable to us under these Terms:
 - 4.5.1. are exclusive of VAT, and you shall in addition pay an amount equal to any VAT

chargeable on those sums on delivery of a VAT invoice; and

4.5.2. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

5. Licence

5.1. In consideration of the Charges paid by you for the Services, we grant to you a non-exclusive, non-transferable licence during the subscription period, as specified in the description of your subscription type, to use the Site for the purposes of providing information to enable us to provide you with the Services.

5.2. You shall not use the licence granted at this clause 5 for any purpose or in any manner other than as set out in these Terms.

6. Intellectual property rights

6.1. Intellectual Property Rights in the Services, Site and Deliverables remain the property of Fluidly (or its licensors).

6.2. Intellectual Property Rights in Your Materials remain your property. However, you grant Fluidly a licence to use, copy, transmit, store and back-up your information and other data for the purposes of enabling you to access and use the Services and for any other purpose related to the provision of the Services to you and other clients. Where you grant us access to third party software or systems to extract data or information for our use or the use of third parties in accordance with these Terms, the Privacy Policy or any other agreement, you must ensure that you are licenced to do so under your terms with such third party. We will not be responsible if you breach any third party terms.

6.3. You may copy, download or export to Microsoft Excel all or part of the Deliverables provided to you by us.

6.4. We shall, subject to clause 9.4, keep you indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by you as a result of or in connection with any claim brought against you for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables by you in accordance with the Terms of Service and Privacy Policy.

6.5. You shall keep us indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by us as a result of or in connection with any claim brought against us, our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use of Your Materials in the performance of these Terms.

6.6. If either party (the Indemnifying Party) is required to indemnify the other party (the Indemnified Party) under this clause 5, the Indemnified Party shall:

6.6.1. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 6.3 or clause 6.5 (as applicable), (IPRs Claim);

6.6.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms,

such approval not to be unreasonably withheld;

- 6.6.3. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by us of the Indemnified Party's costs so incurred; and
- 6.6.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

7. Data protection and data processing

- 7.1. We shall process the Personal Data in accordance with these Terms and our Privacy Policy for the purpose of providing the Services to you and our clients.
- 7.2. To the extent we process Personal Data as a Data Processor on your behalf we shall prior to the GDPR Date only process Personal Data in accordance with your instructions.
- 7.3. From the GDPR Date, to the extent that we are processing Personal Data on your behalf, we shall:
 - 7.3.1. ensure a level of physical and technical security in respect of Personal Data that is appropriate to the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, damage or alteration, or unauthorised disclosure of or access to personal data transmitted, stored or otherwise processed;
 - 7.3.2. subject to clause 7.4 only process personal data in accordance with your written instructions or as agreed between us in writing ("Processing Instruction").
 - 7.3.3. inform you if we become aware of a Processing Instruction that, in our opinion, infringes Data Protection Laws, provided that to the maximum extent permitted by mandatory law, we shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with your Processing Instructions following your receipt of that information;
 - 7.3.4. not engage sub-processors other than the Approved Sub-processors without your prior consent and any sub-processing will be done pursuant to a written contract; and
 - 7.3.5. ensure that any employee or sub-processor authorised to process Personal Data are subject to a binding written contractual obligation with us to keep the Personal Data confidential (except where disclosure is required in accordance with Applicable Law
- 7.4. We shall be liable for losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under or in connection with these Terms:
 - 7.4.1. only to the extent caused by our processing of Personal Data under these Terms and directly resulting from our breach of this clause 7; and
 - 7.4.2. in no circumstances to the extent that any losses (or the circumstances giving rise to them) are contributed to or caused by any breach of these Terms by you.

8. Confidentiality

- 8.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause 8.2 or under the Privacy Policy.
- 8.2. Each party may disclose the other party's confidential information:
 - 8.2.1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights, providing the Services or carrying out its obligations under or in connection with these Terms. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
 - 8.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9. Limitation of liability

- 9.1. Nothing in these Terms shall limit or exclude our liability for:
 - 9.1.1. death or personal injury caused by its negligence;
 - 9.1.2. fraud or fraudulent misrepresentation; or
 - 9.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 9.2. Except as expressly and specifically provided in this agreement:
 - 9.2.1. you assume sole responsibility for results obtained from your use of the Services, and for conclusions drawn from such use. We shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to you in connection with the Services, or any actions taken by us at your direction;
 - 9.2.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 9.2.3. the Services are provided to the Customer on an "as is" basis.
- 9.3. Subject to clause 9, we shall not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms for: (i) loss of profits; (ii) loss of sales or business; (iii) loss of agreements or contracts; (iv) loss of anticipated savings; (v) loss of or damage to goodwill; (vi) loss of use or corruption of software, data or information; and (vii) any indirect or consequential loss.
- 9.4. Subject to clause 9, our total liability to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with these Terms shall be limited to the Charges paid by you in the 12 months preceding an applicable claim.
- 9.5. The terms implied by sections 3 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms.

9.6. We shall not be in breach of these Terms or liable for failure to provide the Services due to circumstances beyond our reasonable control.

10. Termination

10.1. Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:

10.1.1. the other party commits a material breach of any term of these Terms which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 7 days after being notified in writing to do so; or

10.1.2. the other party becomes subject to an Insolvency Event.

10.2. Without affecting any other right or remedy available to us, we may terminate or suspend these Terms with immediate effect if you fail to pay any amount due under these Terms on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.

10.3. Either party may terminate these Terms at any time by giving 30 days' written notice to the other party.

11. Consequences of termination

11.1. On termination or expiry of these Terms:

11.1.1. you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, we may submit an invoice, which shall be payable immediately on receipt; and

11.1.2. the following clauses shall continue in force: clause 1 (Interpretation), clause 6 (Intellectual property rights), clause 8 (Confidentiality), clause 9 (Limitation of liability), clause 11 (Consequences of termination), clause 12 (General), clause 13 (Governing law and Jurisdiction).

11.2. Fluidly shall not provide any refund for any remaining prepaid period for prepaid Charges in accordance with your subscription type selected from our Site.

11.3. Termination or expiry of these Terms shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination or expiry.

12. General

12.1. These Terms are personal to you and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of your rights and obligations under these Terms.

12.2. We may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of our rights under these Terms.

12.3. No variation of these Terms shall be effective unless it is in writing and signed by the parties (or their authorised representatives). Notwithstanding the preceding sentence, Fluidly shall be entitled to make changes to the Services or the Deliverables available to be provided by giving you thirty (30) Business Days' notice of such change.

- 12.4. A waiver of any right or remedy under these Terms or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 12.5. A failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.6. If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.
- 12.7. These Terms and Privacy Policy constitute the entire agreement between the parties and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.8. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 12.9. No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 12.10. Any notice given under these Terms of Service by either party to the other must be in writing and will be deemed to have been given on transmission. Notices to Fluidly must be sent to support@fluidly.com or to any other email address notified by email to you by Fluidly. Notice to you will be sent to the email address which you provided when setting up your account for the Service. We reserve the right to send notices to the address provided by you when registering for an account.
- 12.11. This clause does not apply to the service of any proceedings or any documents in any legal action.

13. Governing law and Jurisdiction

These Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or their subject matter or formation.