

FileMaker EMEIA and Asia Pacific Stores - Terms & Conditions

1. About these Terms and Conditions

In these terms and conditions "we" and "us" mean FileMaker, Inc. and/or FileMaker International (collectively referred to as "FMI"), and "you" means you the customer. In these terms and conditions certain words spelt with initial capital letters are defined terms. For your ease of reference these defined terms are listed together at the end of the terms and conditions. These terms and conditions together with your Order Confirmation constitute the Contract between us and you for the supply of Products and Services. No other terms and conditions shall apply. The Contract cannot be varied unless we agree to vary it in writing or by email.

2. Placing Your Order

2.1 To place an Order you must be 18 years of age or over.

2.2 You may place an Order by filling in the Order Form on the FMI Store Web Site after entering your order information and clicking on the appropriate submission button.

2.3 When you place your Order, we will issue you with a Web Order Number. We will do this via the FMI Store Web Site. Please note that such a Web Order Number is supplied for reference purposes only and does not constitute our acceptance of your Order.

2.4 By placing an Order, you make an offer to us to purchase the Products you have selected on these terms and conditions. We may or may not accept your offer at our discretion.

2.5 If we accept your Order, we will notify you of our acceptance by issuing an Order Confirmation. We will send your Order Confirmation to you by e-mail provided you have indicated an e-mail address on your Order Form. The Order Confirmation will be effective on sending. If we cannot accept your Order we will attempt to contact you by email or telephone or post.

2.6 Whilst we will make every effort to supply you with the Products listed on the Order Confirmation, there may be occasions where we are unable to supply these Products because, for example, (i) such Products are no longer being manufactured or available or (ii) if there was a pricing error on the FMI Store Web Site. In such circumstances we will contact you to inform you and may suggest alternative Products that you might wish to purchase. If you do not accept our suggestions then we will cancel your Order in relation to those Products we cannot supply and repay you any money that you may have paid to us in respect of those Products. In the event of a typographical error or technological error causing a mistake in price to be shown, FMI reserves the right to correct the error and to charge you the correct price. Before it does so, FMI will notify you of the mistake and will offer you the opportunity of a full refund. You will receive a notification with or prior to your delivery. Subject to clause 9.4 below, repayment of such monies will be the extent of our liability to you if we are unable to deliver to you the Products you have ordered.

2.7 Information contained in our advertising, brochures, other written materials, on our web sites or given to you by our agents or employees constitutes an invitation to treat. No such information constitutes an offer by us to supply any products.

3. Supply of Your Products

Subject to these terms and conditions, we will supply to you the Products indicated on your Order Confirmation.

4. Prices

4.1 The price for the Products will be the price indicated on your Invoice.

4.2 Where applicable VAT is payable by you at the applicable rate as indicated on your Invoice. For orders shipped to countries outside the European Union the Shopping Cart Total excludes charges that you may have to pay when importing into your country. These charges will normally be collected at the time of delivery by the shipping company.

Customers in the UK purchasing ELECTRONIC SOFTWARE DOWNLOADS, LICENSING or MEMBERSHIPS: You will still be charged VAT even if you have a tax registration number. The FMI International Store is based in the UK and so products that are classified as services will be subject to the UK rate of VAT. The charged VAT amount can however be claimed back from the UK tax authorities if you are registered for VAT.

Customers in Ireland purchasing PHYSICAL products (PHYSICAL SOFTWARE PRODUCTS, CD's or DVD's): You will still be charged VAT even if you have a tax registration number. FMI's physical products are shipped from Ireland and so these items will be subject to the Irish rate of VAT. The charged VAT amount can however be claimed back from the Irish tax authorities if you are registered for VAT.

4.3 Delivery costs, where applicable, are payable by you as indicated on your Invoice.

5. Paying for Your Products

5.1 You may pay for your Products by the methods of payment as may be displayed on the payment paragraph of the FMI Store Web Site from time to time.

5.2 You must pay in the currency as indicated on your Invoice.

5.3 If you are paying by credit card, then you must supply your credit card details when you place your Order. Your credit card will be charged when we issue your Invoice or on shipment of your Products. We will not supply the Products to you nor perform the Services until your credit card issuer has authorised the use of your card for payment of the Products and/or Services ordered. If we do not receive such authorisation we shall let you know. We reserve the right to verify the identity of the credit card holder by requesting appropriate documentation.

5.4 If you are paying by bank transfer a request for payment will be sent to you and your Products will be supplied and Services provided after your payment is cleared. If we do not receive payment in cleared funds within 30 days after the date of your Order then your Order will be cancelled.

5.5 If you are paying by purchase order, then you are required to accept and comply with FMI's Electronic Purchase Order Agreement terms and conditions as part of your web store order process.

5.6 We will send request for payment, your Invoice, and Products to you at the billing address indicated on your Order Confirmation. We may, however, only send the documents by e-mail where you have indicated an e-mail address on your Order Form.

5.7 To ensure that your credit, debit or charge card is not being used without your consent, we will validate name, address and other personal information supplied by you during the order process against appropriate third party databases. By accepting these terms and conditions you consent to such checks being made. In performing these checks personal information provided by you may be disclosed to a registered Credit Reference Agency that may keep a record of that information. You can rest assured that this is done only to confirm your identity, that a credit check is not performed and that your credit rating

will be unaffected. All information provided by you will be treated securely and strictly in accordance with the Data Protection Act 1998.

6. Delivery of Your Products

6.1 Orders will not be accepted and products will not be delivered to any address outside the following countries. Only ESD (electronic software download) orders are available in countries marked with an asterisk (*).

Australia
Austria
Belgium
Czech Republic *
Denmark
Finland
France
Germany
Greece *
Hong Kong*
Iceland
India *
Ireland
Israel *
Italy
Korea*
Luxembourg*
Malaysia*
Netherlands
New Zealand
Norway
Philippines*
Poland *
Portugal*
Russia *
Singapore*
South Africa *
Spain
Sweden
Switzerland
Thailand*
Turkey *
United Kingdom

6.2 Subject to clause 6.1 we will deliver your Products to the delivery address as shown on your Order Confirmation.

6.3 We will use our reasonable endeavors to deliver your Products promptly following the date of issue of your Order Confirmation. Delivery times for physical products are dependent upon the delivery option selected by the customer (e.g., FedEx International Economy provides 3 – 5 day delivery and FedEx International Priority provides next business day delivery). Estimated Product order processing times which are given at the time of placing an Order are estimates only and do not equate to delivery times.

6.4 Title to and risk of loss in your Products will pass to you on delivery of the Products to the address stated in your Order Confirmation.

6.5 Upon delivery of the Products to our carrier we will send you a confirmation of shipment by e-mail

provided you have indicated an e-mail address on the Order Form.

6.6 Certain items may ship by post and cannot be tracked once they have entered the postal system. All other shipments use carrier delivery for maximum security and tracking.

7. Your Rights to Withdraw from the Contract and to Return Faulty Products or Products which are not in Conformity

7.1 Right to withdraw from the contract. If you are not satisfied with any Product or the terms of any entitlement to Services you have purchased from us, you may return the Product to us or cancel the entitlement to Services and obtain a refund of the price of the returned Product or Service entitlement if you contact us within 14 Calendar Days of delivery of the Product or entering into the contract for the purchase of Services.

7.2 Exceptions to the right to withdraw from the contract. (1) You may not obtain a refund for a Service if you have commenced use of the Service. (2) You may not return a Software volume license or maintenance order. If you do not accept the terms of a volume license or maintenance order then you must not install, copy, download, access or use the Software, and return the Software within 14 Calendar Days of delivery.

7.3 Conditions to exercise the right to withdraw from the contract. You can exercise your right to return the Product to us or cancel the entitlement to Services and obtain a refund of the price of the returned Product or Service entitlement provided: (i) You inform us of your decision to cancel the contract within 14 Calendar Days of delivery of the Product or the date you purchased the Services; and (ii) The Product(s) are returned in their original condition and the security seals on the Product(s) are intact; and (iii) The Product(s) are returned in accordance with the procedure described in paragraph 7.4 below. Please note that while the Product(s) remain in your possession you are under a duty to ensure that the Product(s) are kept safe and secure.

7.4 If you desire to process a return or claim a refund please telephone [Customer Support](#) Monday – Friday, 9:00 a.m. – 5:00 p.m. (closed on public holidays and company holidays) to make arrangements for return.

7.5 Faulty products or products which are not in conformity. If a Product was supplied in error, is incomplete or faulty and you believe that you are entitled to a replacement, please telephone [Customer Support](#) Monday – Friday, 9:00 a.m. – 5:00 p.m. (closed on public holidays and company holidays).

7.6 Products obtained from any reseller or any other third party must be returned directly to the reseller from which they were obtained and are subject to the return policies of that reseller.

8. Software

8.1 All Software is licensed to you on the terms and conditions of the applicable license agreements. These license agreements are shipped with the Software or are provided when the Software is downloaded in accordance with clause 8.3.

8.2 You shall be responsible for ensuring that any Software or Product bundle ordered by you is suitable for your requirements and is compatible with your existing systems and practices. We regret that we are unable, under any circumstances to refund monies for an opened software package unless it is faulty.

8.3 You may also purchase any downloadable Software displayed on the FMI Store Web Site. You may only pay for such Software by credit card, bank transfer or Purchase Order, subject to the following. Purchase Orders may only be used for licensing store orders with a value excluding tax/VAT that are less than FMI's requirements (US\$10,000, AUD 9,800, £6,250, €7,250, CHF 10,000, DKK 57,500, NOK 60,000, NZD 13,400, SEK 67,500). Once we have received payment authorisation from your credit card issuer, you will receive instructions to begin downloading your Software. If, during download, the transmission is interrupted in any way, you should begin the downloading process again. Should you be unable to complete the download, you may within 14 Calendar Days of receiving the download

instructions request a refund in writing. Refund requests should be sent by post to us at the address shown in the contact details in paragraph 10. A refund of the purchase price shall be the extent of our liability for the unsuccessful downloading of Software.

9. Our Liability

9.1 These terms and conditions set out the full extent of our obligations and liabilities in respect of the supply of the Products (and performance of telephone support and warranty services) and the performance of any Services.

9.2 Save as set out at paragraph 9.3 below, there are no warranties, conditions or other terms that are binding on us regarding the supply of Products or the provision of Services except as expressly stated in the Contract.

9.3 If you are not a consumer user: Any warranty, condition or other term arising out of or in connection with the supply of Products and/or the provision of Services which might otherwise be implied into or incorporated in the Contract by statute, common law, laws applicable in the country where you purchased the Products or Services or otherwise (including without limitation any implied term as to quality, fitness for purpose, reasonable care and skill) is hereby expressly excluded to the maximum extent permitted by law. In particular, we will not be responsible for ensuring that the Products are suitable for your purposes. If you are a consumer user: Depending on the country in which you reside, there are certain implied warranties and conditions primarily relating to the quality of the Product which FMI is required to make, and FMI makes these implied warranties and conditions to the extent FMI is required to do so. You should contact your local citizen's advice bureau for more information about these requirements. If these implied warranties and conditions are not required to be made by FMI, FMI does not make them. In particular, FMI will not be responsible for ensuring that the Products are suitable for your purposes unless you have made your purpose for the Product known to FMI.

9.4 In cases where consumers claim financial compensation under statute, FMI will seek to limit compensation to direct damages. If you are not entitled to financial compensation as a consumer under a statutory right, the provisions of clauses 9.5 and 9.6 shall apply. Nothing in the Contract shall limit or exclude our liability (i) for death or personal injury caused by our negligence or (ii) for fraud or (iii) any breach of the obligations implied by applicable compulsory national laws as to title or (iv) any liability which cannot be excluded by law.

9.5 Subject to clause 9.4 we will not be liable under the Contract for any loss of income, loss of profits, loss of contracts, loss of data or for any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.

9.6 Subject to clause 9.4 our maximum aggregate liability under the Contract whether in contract, tort (including negligence) or otherwise shall in no circumstances exceed the amount payable by you to us in respect of the Product(s) and/or Services in question.

9.7 If you are a consumer, you may have statutory rights, which may be in addition to the rights set out in these Terms, and information about these statutory rights may be obtained from citizens' advice organisations. No provisions of clause 9 affect your statutory rights as a consumer. In addition, this clause does not affect your right to return the Products as per clause 7.

10. Contacting FMI

You can contact us:

¥ by telephone call [Customer Support](#) Monday – Friday, 9:00 a.m. – 5:00 p.m. (closed on public holidays and company holidays);

¥ by post Attn:

- FileMaker International, 2 Furzeground Way, Stockley Park, Uxbridge, Middlesex, UB11 1BB

(For orders in Europe, Middle East and Africa)

- FileMaker, Inc., 5201 Patrick Henry Drive, Santa Clara, CA 95054 (For orders in Asia Pacific Region)

When contacting us you must quote your Web Order Number.

11. Export Control

Upon entering into a contract, you agree to comply with all Export Laws. You agree (i) not to export any Product to any country in contravention of any Export Law, and (ii) not to export any Product to any country for which an export license or other governmental approval is required, without first obtaining all necessary licenses or other approvals. You warrant that you are not located in, under the control of, or a national or resident of any country to which export of the Products is prohibited by any Export Law.

12. Data Protection

By placing your Order, you agree and understand that we may store, process and use data collected from your Order for the purposes of processing your Order. Please note that we may also share such data globally within the FMI group of companies. All FMI companies will protect your information in accordance with the [FMI Customer Privacy Policy](#). We work with other companies that help us provide products and services to you. For example we may provide your information to these companies for the shipment of Products to you or to ensure that you benefit from special purchase discounts or terms. In addition, where you have requested finance in order to pay for the Products ordered, some of the information you provide to us will be passed to companies providing finance for your purchase. For more detailed information on how we protect your information please refer to our customer [Privacy Policy](#). If you wish to have access to the information that we hold concerning you, if you want to make any changes, or if you do not want to receive information from us or these third party companies, contact: FMI's European data controller at FileMaker International, 2 Furzeground Way, Stockley Park, Uxbridge, Middlesex, UB11 1 BB(for Europe, Middle East and Africa) or FileMaker Inc., 5201 Patrick Henry Drive, Santa Clara, California, 95054 (for Asia Pacific)

13. Circumstances beyond our reasonable control

We will make every effort to perform our obligations under the Contract. However, we cannot be held responsible for delays or failure to perform if such delay or failure is caused by any circumstances beyond our reasonable control. In the event of a delay, we will perform our obligations as soon as reasonably possible.

14. Disagreements Governing Law and Jurisdiction

We will try to solve any disagreements quickly and efficiently. If you are not happy with the way we deal with any disagreement and you want to take court proceedings, you must do so within England and the laws of England will apply (for customers in Europe, Middle East and Africa). Otherwise, the laws of the United States and California will apply (for customers in Asia Pacific).

15. General

15.1 Neither our failure or your failure to enforce any term of the Contract constitutes a waiver of such term. Such failure shall in no way affect the right later to enforce such term.

15.2 The invalidity or unenforceability of any provision of the Contract shall not adversely affect the

validity or enforceability of the remaining provisions.

16. Defined Terms

16.1 In these terms and conditions:

"FMI Authorised Service Provider" means a service provider authorised by us to provide guarantee service;

"FMI Store Web Site" means our web site for customers in Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Israel, Italy, Luxembourg, Malaysia, Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey and United Kingdom;

"Contract" means these terms and conditions together with your Order Confirmation;

"Consumer" means a customer who purchases Products otherwise than in the course of a business;

"Export Laws" means all laws, regulations and orders of the United States, the European Union and the United Kingdom applicable to the export, re-export, transfer or resale of Products; "Invoice" means the invoice issued by us to you for the price of the Products;

"Order" means an order placed by you in accordance with these terms and conditions;

"Order Confirmation" means the order confirmation issued by us to you indicating acceptance of your Order;

"Order Form" means the electronic order form on the FMI Store Web Site;

"Product" means any product listed on the FMI Store Web Site which we agree to supply to you on these terms and conditions and may include Services;

"Services" means any chargeable or other services (excluding guarantee and telephone support services) listed on the FMI Store Web Site which we agree to supply to you on these terms and conditions;

"Software" means any Product which is software including without limitation bundled software, stand alone software and downloadable software;

"Territory" means the countries of Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, India, Ireland, Israel, Italy, Luxembourg, Malaysia Netherlands, New Zealand, Norway, Philippines, Poland, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey and United Kingdom;

"Web Order Number" means the order number issued by us to you;

"Working Day" means any day other than a Saturday, a Sunday or a public holiday in the United Kingdom (for orders in EMEA) or public holidays in the U.S. (for orders in Asia Pacific).

16.2 FileMaker International is a company incorporated in the United Kingdom with its registered office at 2 Furzeground Way, Stockley Park, Uxbridge, Middlesex, UB11 1BB and with registered number 3555357. FileMaker, Inc. is a US company incorporated in Delaware with its registered office at 5201 Patrick Henry Drive, Santa Clara, CA 95054.

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