

Blue Alligator – Cloud Account General Terms and Conditions

1. Warranty

- a. The Software and Services described in these terms define exclusively the Blue Alligator's products and contractual obligations. Blue Alligator shall discharge its obligations with all due skill and care, in accordance with good industry practice and its own established internal procedures;
- b. Documentation and advice provided shall enable the Customer's Personnel to make proper use of the Service;
- c. All reasonable steps consistent with good industry practice shall be taken to ensure that neither the Service provided, nor any media on which Software is provided, shall introduce any virus or disabling programs or devices into computer systems owned or used by the Customer;
- d. Unless stated elsewhere in these Terms and Conditions, the Customer shall accept and use the Software "AS IS", with any faults or failings and without any representation, warranty or guarantee whatsoever, express or implied, including without limitation any implied warranty of accuracy, completeness, quality, continuity of service, connectivity, merchantability or fitness for a particular purpose;
- e. The Customer accepts all responsibility for selection, testing and use of the Software and the results obtained therefrom as well as the results of any programs, equipment or services used in connection with the Software.

2. Ownership

Nothing within this Agreement shall be deemed to confer any rights of ownership to the Customer over any Software or custom developments used to provide the Service, which rights shall at all times be fully vested in Blue Alligator or its suppliers.

3. Intellectual Property Rights Indemnification

- a. Blue Alligator shall defend any action brought against the Customer by a third party, which claims that the Software infringes any EU patent, copyright, or trademark. Within the limitations of clause 7b and clause 7c, Blue Alligator indemnifies the Customer against all liability, loss, damage or expense that it may incur, provided that the Customer promptly notifies Blue Alligator in writing of such claim, and gives full and complete authority, information, and cooperation to settle or defend the infringement claim. Blue Alligator shall have the right to select counsel of its own choosing to defend the infringement claim;
- b. Blue Alligator shall not be liable to the Customer if the infringement claim is caused by:
 - i. modification of the Software by a party other than Blue Alligator;
 - ii. modification of the Blue Alligator Software to specifications provided by the Customer;
 - iii. use of the Software in a manner for which it was not designed;
 - iv. Interconnection of the Software with products not supplied by Blue Alligator.

4. Consequential Loss

The Parties shall have no liability for any indirect, consequential or unforeseen losses or damage (including loss of profits), even if it had been advised of the possibility of such damages.

5. Health & Safety

- a. Customer shall give free and safe access to Sites where such access is necessary for Blue Alligator Personnel to execute its responsibilities;
- b. Blue Alligator shall ensure that its Personnel comply with Customer safety and security policies, rules and other requirements whenever they are on the Site;
- c. If required by the Customer, Blue Alligator shall provide a list of Personnel who may require admission to Customer Sites in connection with Blue Alligator's obligations under this Agreement;
- d. The Customer may at any time refuse to admit to the Site any Supplier Personnel whose admission is undesirable.

6. Secrecy

- a. No photographs of any of Customer equipment, installations or property shall be taken by Blue Alligator Personnel without the Customer's prior consent in writing;
- b. Both parties shall not divulge Confidential Information to any third party (except their own Personnel whose duties reasonably require such disclosure, on condition that its Personnel accept a like obligation of secrecy);
- c. This undertaking to keep Confidential Information secret will not apply to information which:
 - i. is already in the one party's possession prior to its disclosure by the other;
 - ii. is lawfully acquired by either party at any time from a third party at liberty to disclose it;
 - iii. comes into the public domain other than through the fault of the receiving party;
 - iv. a party is required to disclose by law or any regulatory authority.

7. Limitation of Liability

- a. Each party accepts full liability for death or personal injury which is caused by its negligence or by its premeditation or the gross negligence or premeditation of its Personnel in the performance of this Agreement.
- b. Each party accepts liability for direct physical damage to its property caused solely according to the relevant EU laws on product liability, and if such damage is caused by the negligence of the other, provided always that the total liability for any such actual injury or damage in respect of any one event or series of connected events does not exceed an amount of EUR 250.000 per event, and not more than EUR 500.000 per year.
- c. The sum set out in clause 7b represents the total liability accepted by either party for any claims arising under or in connection with this Agreement save that liability for an event described in clause 7a is not limited by this Agreement.

8. Payments

Any payments due to Blue Alligator must be made within the due date set for each payment. In the event that any amount becomes overdue by a period in excess of 30 days Blue Alligator reserves the right to withdraw service albeit that all amounts owing to Blue Alligator must still be paid.

- a. In the event of a project delay that is not within BAC's sole control, BAC reserves the right to require an interim payment to be made by the customer to compensate for materials purchased and time spent on the project.

- b. Any cancellation of the order prior to delivery or commencement of services shall be subject to a charge of 20% of the total order plus full payment for any items purchased in pursuance of the order
- c. No cancellation of the order will be accepted after delivery of services has commenced.

9. Blue Alligator Cloud Fair Use policy

Blue alligator reserves the right to restrict access to the Cloud to a level of fair use. The prescribed level of fair use will be set at the sole discretion of Blue Alligator and may be changed from time to time. Cloud account users shall have the right to connect a total of 3 devices containing only the App at AppStore price and may extend this right by purchasing Cloud upgrades, please speak to Blue Alligator for details.

10. Compliance with Law

The parties shall each ensure that in connection with this Agreement, they will at all times comply with the relevant legislation, regulations, and Data Protection Legislation of any government, governmental or regulatory agency.

11. General

a. Waiver:

The failure of either party to enforce in any one or more instances any of the terms and conditions of this Agreement shall not be construed as a waiver of future performance of any such term or condition. Waiver of any term or condition shall only be deemed to have been made if expressed in writing by the party granting such waiver.

b. Severability:

If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be reformed, construed and enforced to the maximum extent permissible, and the remaining provisions shall remain in full force and effect.

c. Force Majeure:

Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement (except for payment of money) or interruption of services resulting directly or indirectly from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquakes, floods, strikes, lock-outs, labour disturbances, foreign or governmental order or any other cause beyond the reasonable control of such party.

d. Law and Jurisdiction:

The construction, performance and validity of the contract shall in all respects be governed by the Laws of England and the Courts of England shall have sole jurisdiction save that Blue Alligator may commence protective proceedings in any other jurisdiction.

e. Entire Agreement:

This Agreement and its Appendices, which are incorporated herein by reference, constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings or agreements, whether oral or in writing between the parties with respect to the subject-matter of this Agreement. Any modification or amendment to this Agreement and its Appendices must be in writing and signed by authorised representatives of both parties.

12. Definitions

Within this Agreement (also including all Appendices and Schedules) the following words and phrases have the following meanings:

a. Data:

Any of the Customer's data to be used in conjunction with the Service.

b. Personnel:

Any employee, director, agent or sub-contractor of Blue Alligator or the Customer as applicable in the context.

c. Site:

The Customer's premises.

d. Confidential Information:

Any of Blue Alligator's or the Customer's (as the case may be) trade, business secrets or proprietary information, which in writing, by any kind of documentation, orally or visually contain conditions of transactions, business rules, business plans, drafts or technical information of any kind that Supplier or Customer by own judgement does not want to be disclosed to a third party.