

# **Fincomp Services Limited**

## **Terms of Use**

The Following Terms of Use (the “New Terms”) have come into effect for all new clients as and from 18 May 2018. All existing clients (who signed up prior to 18 May 2018) should have been contacted by Fincomp about the New Terms. Existing clients have the right to decline to accept these New Terms and terminate their Fincomp contracts and can do so by contacting us by email at [customerservices@fincomp.co.uk](mailto:customerservices@fincomp.co.uk). All other existing clients shall be deemed to have accepted the New Terms if they do not contact us before 25 May 2018.

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## A. General Terms

These terms of use (the “Terms of Use”) together with your Client Price List govern your access to and use of all Fincomp Services Limited (“Fincomp”) services (the “Services”). Where the context permits, the words “we”, “our” and “us” refer to Fincomp. Please read these Terms of Use carefully before using the Services. Please note that in these Terms of Use, a reference to our providing you with “notice” shall mean a message sent to your registered email address unless otherwise stated.

1. By using the Services you agree to be bound by these Terms of Use in their entirety for the period of time agreed between the parties, encompassing both the initial billing period agreed at sign-up and such further periods as are renewed automatically (each a “Fixed Contract Period”) in accordance with these Terms of Use.
2. If you are using the Services on behalf of an organisation then you are agreeing to these Terms of Use for that organisation and confirm that you have the authority to bind that organisation to these Terms of Use. In that case “you” and “your” will refer to that organisation.
3. Use of and Changes to the Services:
  - a. You may use the Services only in compliance with these Terms of Use.
  - b. You may use the Services only if you have the power to form a contract with Fincomp and are not barred under any applicable laws from doing so.
  - c. The Services may continue to change over time as we refine and add more features and we may modify any content from the Services from time to time.
  - d. In the event of a material change as set out in clause 3(c), we will provide any user of that aspect of the Services with at least 30 days’ notice prior to taking such action, save where the changes to the Services are the result of (i) minor technical adjustments which can be of no real significance to your use of the Services; (ii) changes required by law; (iii) changes required by necessity (e.g. to ensure the integrity or security of the Services or your Data) or (iv) enhancements to the Services to reflect advancements in technology for your benefit, in which case we may not be able to provide you with 30-days prior notice and instead notice may be provided to you after the date of the material change.
  - e. The price of the Services are subject to an annual price increase, which will be the annual percentage increase in the Retail Price Index (RPI) published by the Office for National Statistics. We will give You 30 days Written Notice of the increase to take effect in May of each year and use the most recently published RPI figure before we give You Written Notice under this point 3(e).

- f. We shall not increase the price of the Services during a Fixed Contract Period. If the annual price rise happens during a Fixed Contract Period, the new prices will only start at the beginning of the next Fixed Contract Period.
- g. The notice referenced in clause 3(d) shall set out the scope of the change and enable you to understand the impact of this change on the delivery of the Services.
- h. If you do not agree to the material change made to the Services described in 3(d) above, you may terminate your use of the Services within 30 days of receiving the notice, and should you decide to terminate, you shall be entitled to a refund of fees paid for the unexpired portion of the Fixed Contract Period (please refer to clause 15).
- i. It is our intention that any such modification as set out in clause 3(c) would not materially reduce the functionality of the Services, however in the exceptional cases where the functionality is materially affected by the modification, we will phase out the modification over a period of 12 months, ensuring that the Service to you remains unaffected for the duration of your Fixed Contract Period, and shall provide you with a clause 3(d) notice prior to your next renewal date to explain the modification to the Services.

## B. Your Data and Privacy

- 4. In using our Services you may be providing us with access to information, emails, files, and/or folders (together, "your Data"). In such cases, you retain full ownership to your Data and we don't claim any ownership of any of your Data. These Terms of Use do not grant us any rights to your Data or intellectual property.
- 5. We may share your Data with selected third parties, including sub-contractors who may perform some or all of the Services on our behalf. Subject to these exceptions, we will not share your Data with any third-party without first obtaining your consent, except in accordance with the Fincomp [Privacy Notice](#).
- 6. Aside from the disclosures set out in the Fincomp [Privacy Notice](#), we will not share your Data with others, for any purpose unless you direct us to. How we collect and use your information generally is also explained in the Fincomp [Privacy Notice](#).
- 7. You are solely responsible for your conduct, the content of your Data, and your communications with others while using the Services. For example, it's your responsibility to ensure that you have the rights or permission needed to comply with these Terms of Use.

## C. Modifications

8. We may revise these Terms of Use from time to time and you shall be provided with at least 30 days' notice of such revisions, while the most current version will always be posted on the Fincomp website. By continuing to access or use the Services after revisions become effective, you agree to be bound by Terms of Use then prevailing. If you do not agree to the revised Terms of Use, you may terminate your use of the Services within 30 days of receiving the notice, and should you decide to terminate, you shall be entitled to a refund of fees paid for the unexpired portion of the Fixed Contract Period (please refer to clause 15).

## D. Account Security

9. You are responsible for safeguarding any passwords that you use to access the Services and you agree not to disclose any such passwords to any third-party.

## E. Your General Responsibilities

10. You, and not Fincomp, are responsible for maintaining and protecting all of your Data and understand that unless clearly stated otherwise, Fincomp is providing you with a Services to assist you and will not be liable for any loss or corruption to your Data that arises from your actions.
11. You are responsible for ensuring that adequate licensing has been purchased for all computer hardware and software items that you use.
12. If your contact information, or other information related to your Account, changes, you must notify us promptly and keep your information current.

## F. Limitation of Liability

13. Nothing in these Terms of Use will affect your statutory rights. While we limit liability in clause 14, we do not in any way exclude or limit our liability for the following:
  - a. death or personal injury caused by our negligence;
  - b. fraud or fraudulent misrepresentation;
  - c. any breach of your statutory rights under the Consumer Rights Act 2015; and
  - d. defective products under the Consumer Protection Act 1987, as may be amended from time to time.
14. If we fail to comply with these Terms of Use, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of these Terms of Use or our negligence, but we are not responsible for any loss or damage that is not

foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into this contract. Fincomp's aggregate liability to you, save as set out in clause 13, shall be limited to the greater of £50 or the amounts paid by you to Fincomp for the past three months.

## G. Termination

15. You can terminate your Services at the end of your Fixed Contract Period by contacting us by email ([customerservices@fincomp.co.uk](mailto:customerservices@fincomp.co.uk)) at least two weeks prior to the end of your Fixed Contract Period. Fees paid by you to us prior to your decision to stop using our Services will not be refunded to you, unless your decision to stop using the Services follows a change in:

- a. the content of the Services as set out in clause 3; or
- b. the Terms of Use as set out in clause 8

in which cases your fees shall be refunded pro-rata for the unexpired portion of your Fixed Contract Period.

16. We reserve the right at our discretion to not permit you to renew your use of the Services by providing you with at least 4 weeks' notice prior to the end of the Fixed Contract Period.

17. In the event of a material breach by you of these Terms of Use (as set out below) or as required by law or requirements set down by government agencies, we retain the right to suspend or terminate the provision of these Services to you, with 10 days' notice to you, and where possible provide you with an opportunity to remediate the situation within this 10-day period. Where remediation is not possible or is not effected by you, then at the end of this notice period, we shall terminate for material breach of these Terms of Use, and no refund of any fees paid will be offered. It shall constitute a material breach of these Terms of Use if we have a reasonable belief that you:

- a. use the Services in any way that would cause us legal liability or be deemed a use for an illegal purpose;
- b. repeatedly or flagrantly violate any of these Terms of Use; or
- c. act in conflict with a court order, or our providing the Services to you is in breach of a court order;

## H. Jurisdiction

18. These Terms of Use and the use of the Services will be governed by the laws of England and Wales (subject to you establishing a right to bring a claim under the governing law of another jurisdiction).
19. These Terms of Use constitute the entire and exclusive agreement between you and Fincomp with respect to the Services, and supersede and replace any other agreements, terms and conditions applicable to the Services. These Terms of Use create no third-party beneficiary rights. Fincomp's failure to enforce a provision is not a waiver of its right to do so later. If a provision is found unenforceable the remaining provisions of these Terms of Use will remain in full effect and an enforceable term will be substituted reflecting our intent as closely as possible. You may not assign any of your rights in these Terms of Use, and any such attempt is void, but Fincomp may assign its rights to any of its affiliates or subsidiaries, or to any successor in interest of any business associated with the Services. Fincomp and you are not legal partners or agents; instead, our relationship is that of independent contractors.

## I. Fees

20. All fees payable by you for the Services shall be in accordance with the scale of fees and rates either: stated in your Client Price List; or published from time to time by us on our website (the "Pricing Structure"). The scale of fees and rates stated in your Client Price List supersede any conflicting scale of fees and rates published on our website. All fees are subject to the annual price increase provided for in clause 3(e).
21. We reserve the right to alter the Pricing Structure, including ceasing to offer elements of the Services as provided for in clause 3. Where a significant change (meaning a change that would lead to you paying more for the Services) is made to the Pricing Structure, we will provide you with notice at least 30 days prior to that new Pricing Structure being applied to the Services we provide you. By continuing to access or use the Services after receiving such notice, you agree to be bound by the revised Pricing Structure as and from the start of the next Fixed Contract Period. If you do not agree to the new Pricing Structure, you can then notify us that you want to discontinue use of the Services.
22. Invoices for Services not subject to a Fixed Contract Period will be raised and dated on, or soon after, the first day of the following month in which they were provided. Fees for these Services will become payable within one month from the date of the invoice.
23. Fees for annually-billed Services are due in advance and your contract will automatically terminate on the expiry of the Fixed Contract Period if payment is not received by the end of the Fixed Contract Period. We shall provide you with notice of the renewal at least 30 days prior to the expiry of the Fixed Contract Period.

24. Your contract for all other Services will automatically renew on the expiry of the Fixed Contract Period and, unless otherwise agreed will be invoiced on, or soon after, the renewal. Fees for these Services will become payable within one month of renewal.
25. If you wish to terminate a Service contract with Fincomp, you must do so by emailing [customerservices@fincomp.co.uk](mailto:customerservices@fincomp.co.uk) at least two weeks before the expiry of the Fixed Contract Period.
26. All fees are exclusive of Value Added Tax which shall be payable by you and will be levied in accordance with UK legislation in force at the tax-point date.
27. All fees paid to us are non-refundable except in circumstances set out in these Terms of Use.
28. Payments for invoices which are not received in full by the due date, will be considered overdue and will remain payable by you, together with interest for late payment which we are entitled to charge. The interest payment will be at a rate equivalent to that set for the purposes of section 6 of the [Late Payment of Commercial Debts \(Interest\) Act 1998](#), calculated on a daily basis from the date of the invoice until payment; such interest to be compounded on the first day of each calendar month and payable both before and after any judgement (unless the court orders otherwise).

## J. Data Protection (GDPR)

In using our Services, you may be giving us access to your Data. Where this happens, for the purposes of the General Data Protection Regulation (“GDPR”) and in the absence of a specific data processor agreement the following applies:

Fincomp is the processor and you are the controller in relation to personal data contained within the Data. You retain control over the content of your Data and as such, the types of personal data that are subject to processing cannot be categorised by us in these Terms of Use. It is assumed such personal data may include all categories of personal data relating to you, or your own clients, customers, suppliers, employees, other personnel and/or other data subjects.

You may notify us of the categories of data subjects or types of personal data to be incorporated into a specific data processing agreement by using the contact details set out in the [Privacy Notice](#).

As a processor, Fincomp shall, in relation to personal data processed by us in the provision of the Services under this Agreement:

- process such personal data in accordance with these Terms of Use and otherwise comply with your documented (including email) instructions in connection with such

processing. Where such instructions are provided orally, we shall keep a record of these. If at any point we become unable to comply with your instructions regarding the processing of personal data (whether as a result of a change in applicable law, or a change in your instructions, or for any other reason), we shall promptly:

- notify you of such inability, to the extent permitted by applicable law; and
  - cease all processing of the affected personal data (other than merely storing and maintaining the security of the affected personal data) until such time as you issue new instructions with which we are able to comply.
- ensure such personal data is kept confidential; (ii) take reasonable steps to ensure the reliability and trustworthiness of our personnel and any sub-processors, and (iii) take reasonable steps to ensure that all relevant Fincomp personnel, and any relevant sub-processors, have committed themselves to ensuring the confidentiality of all personal data that they process;
  - ensure that, in each instance in which we engage a new sub-processor, we shall notify you and: (i) allow you a reasonable opportunity to object to the appointment of that sub-processor (and your authorisation is deemed to be granted if you do not object within thirty (30) days of being notified of the proposed sub-processor); and (ii) enter into a binding written agreement with the sub-processor that imposes on the sub-processor the same obligations that apply to us under this Agreement with respect to the processing of personal data; subject to compliance with the foregoing, you hereby generally authorise us to engage sub-processors in relation to the Services.
  - at your request and sole expense, promptly provide you with all reasonable technical and organisational assistance (taking into account the nature and functionality of the Services) necessary to respond appropriately to requests from individuals to exercise their rights under the GDPR;
  - at your request and sole expense, promptly provide you with all reasonable assistance necessary to enable you to: (i) notify relevant breaches of the GDPR to the relevant authorities and/or affected individuals; (ii) conduct Data protection impact assessments, where required; and (iii) obtain any necessary authorisations from any relevant regulatory authorities;
  - delete (or, upon your request at or prior to termination, return) your Data processed in the performance of the Services in our possession within 15 days after the termination or expiry of this Agreement, unless the applicable law of the European Union or an EU Member State requires otherwise;
  - at your request and sole expense (including our reasonable costs and expenses): (i) promptly provide you with all information necessary to enable you to demonstrate compliance with your obligations under the GDPR, to the extent that we are able to provide such information; and (ii) allow for and contribute to audits, including



inspections, conducted by you your auditors or appointees in relation to compliance with these Data processing terms, provided that such audit shall be during regular business hours, with reasonable advance notice to us and subject to reasonable confidentiality procedures. Before the commencement of any such audit, the parties shall mutually agree upon the scope, timing, and duration of the audit. You may not audit us more than once annually and we reserve the right to charge a fee for its reasonable costs associated with any such audit;

- notify you without undue delay in the event of: (i) becoming aware of any personal data breach; or (ii) receipt of any correspondence or communication from any individual, regulatory authority or third-party regarding the processing of such personal data; and
- implement, where possible, the procedures outlined in our [Information Security Policy](#) to ensure appropriate technical and security measures are in place to protect any such personal data against unauthorised or unlawful processing and against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to such personal data.