

## CONSUMER CUSTOMER TERMS AND CONDITIONS

Please read the following important terms and conditions before you buy a licence to use the *Fenix* flight simulator software (the “Software”) from us and check that they contain everything you expect and nothing that you are not willing to agree to.

These terms and conditions (“Terms”) set out:

- your legal rights and responsibilities;
- our legal rights and responsibilities; and
- certain key information required by law.

In these Terms:

- ‘we’, ‘us’ or ‘our’ means **Fenixsim Limited** a private limited company registered in England with company number 13057200 and registered office at Ashford House, Grenadier Road, Exeter, EX1 3LH. We operate via our website <http://fenixsim.com> (our “Site”); and
- ‘you’ or ‘your’ means the person licensing the Software from us.

If you have any questions about these Terms or any purchases you have made, please contact us by sending an email to [support@fenixsim.com](mailto:support@fenixsim.com)

### 1. Introduction

- 1.1. When you buy the licence to use the Software from our Site, you agree to be legally bound by these Terms.
- 1.2. These Terms apply only if you are licensing the Software on our Site as a consumer (i.e. for private home use only, for purposes outside of your business, craft or profession). You must not buy a user licence for the Software on our Site for business purposes or any other purpose except for as a consumer. If you are a business or plan to use the Software in any way that will directly or indirectly result in monetary or other gain, please contact us to agree our business terms. Please see clause 6 for further details on how you may and may not use the Software.
- 1.3. This contract is only available in English. No other languages will apply to this contract.

### 2. Information we give you

- 2.1. By law, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 say that we must give you certain key information before a legally binding contract between you and us is made. If you want to see this key information, please scroll down and read the “Summary of some of your key rights” and read the acknowledgement email (see clause 4.4 below) or contact us using the contact details at the top of these terms.
- 2.2. The key information we give you by law forms part of these Terms.
- 2.3. If we have to change any key information once a legally binding contract between you and us is made, we can only do this if you agree to it.

### 3. Your privacy and personal information

- 3.1. Our Privacy Policy is available at <https://fenixsim.com/legal>

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3.2. Your privacy and personal information are important to us. Any personal information that you provide to us will be dealt with in line with our Privacy Policy, which explains what personal information we collect from you, how and why we collect, store, use and share such information, your rights in relation to your personal information and how to contact us and supervisory authorities if you have a query or complaint about the use of your personal information.

### 4. Ordering the Software user licence from us

4.1. Below, we set out how a legally binding contract for the purchase of the Software user licence between you and us is made.

4.2. You place an order on the Site. Please read and check your order carefully before submitting it. You will be able to correct any errors before submitting your order to us.

4.3. Before you place your order, you must check and confirm that your computer meets the system requirements to run the Software. Please click on the 'system requirements' button if you want to see the requirements.

4.4. When you place your order for the Software user licence at the end of the online purchase process, you will be asked to tick a box to confirm that you consent for the download of the digital content to start immediately after your order has been accepted and that you acknowledge that this means you lose your right to cancel.

4.5. We may contact you to say that we do not accept your order. This is typically for the following reasons:

4.5.1. the Software is unavailable;

4.5.2. we cannot authorise your payment;

4.5.3. you are not allowed to buy a licence to use the Software; or

4.5.4. there has been a mistake with the user licence pricing or description of the Software.

4.6. Once you have placed your order for the Software user licence and it is available to download a legally binding contract will be in place between you and us.

### 5. No right to cancel

5.1. When you place your order for the Software user licence, you do not have the right to cancel your purchase once your licence of the Software has been validated (following your download and installation of the Software and first login to your account) and you are not entitled to a refund unless the Software is faulty. This does not affect your rights if the Software is faulty; a summary of these rights is provided at the top of these Terms, and also see clause 10 below.

### 6. Permission to use the Software

6.1. When you buy your licence to use the Software and it is downloaded, you will not own it. Instead we give you permission to use it (also known as a 'licence') for the purpose of you using and enjoying it according to these Terms.

6.2. The licence to use the Software is:

6.2.1. personal to you (and may not be transferred to anyone else);

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- 6.2.2. non-exclusive to you (we may offer the same licence to other users).
- 6.3. The Software is licensed under these Terms only to the "Consumer Gaming Market", being the market of flight simulation software for entertainment purpose by consumers, using but not limited to desktop computers, laptops, game consoles and mobile devices, equipped with but not limited to traditional visual systems or VR headsets and limited to use whereby the software product may only be used on a single computing device within the End User's simulation setup. Cockpit replication hardware connectivity is limited to primary flight controls (including ailerons, rudders, and elevators) and secondary flight controls (including spoilers, flaps, slats, and air brakes), and other devices in so far connectivity is provided by the underlying platform. Professional training applications are strictly excluded.
- 6.4. The Software must not be used on home cockpits.
- 6.5. You shall only use the Software for non-commercial purposes (meaning private home entertainment use). You shall refrain from any other use, in particular commercial use (meaning that which is intended for, or directed towards, commercial advantage, monetary compensation, professional training or educational purposes).
- 6.6. The Software may only be used by individuals in their capacity as consumers and private individuals for their own private home entertainment use (and not any commercial, business or professional use).
- 6.7. For any commercial use of the Software, you must contact us to enter into a separate agreement under prices and terms and conditions relating to commercial use as determined by us.
- 6.8. You shall comply strictly, at all times, with the agreed user rights and restrictions in these terms. If you are a business and use the Software for any commercial purposes (or any purpose other than non-commercial purposes permitted by these Terms) or otherwise breach clauses 6.5, 6.6, 6.9 or 6.11, , you shall be liable towards us for payment of liquidated damages of GBP 1.000 (one thousand pounds sterling) for each day you fail to comply with the user rights and restrictions up to a maximum of GBP 10.000 (ten thousand pounds sterling) per year. This right is without prejudice to any other rights and remedies available to us.
- 6.9. The Software may not be:
- 6.4.1 copied by you except for a reasonable number of necessary back-ups, or installed on more than one computer or laptop;
  - 6.4.2 changed by you (which means, in particular, that you are not allowed to adapt, reverse-engineer or decompile it, or try to extract the source code from it);
  - 6.4.3 combined or merged with, or used in, any other computer program; or
  - 6.4.4 distributed, sold or licensed by you to any third party;
- 6.10. You must follow and comply with any instructions or guidance about the use of the Software that come with the Software and the licence.

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- 6.11. You must not conceal, change or remove any markings which show who owns information in the Software, such as copyright (©), registered trade mark (®) or unregistered trademark (™) markings.
- 6.12. If you have any issues with the Software, please contact us and we will use reasonable endeavours to assist. However we do not commit to providing any updates, upgrades, new releases or new versions of the Software, or any ongoing support or maintenance of the Software after you have bought a user licence.
- 6.13. You will not obtain any rights of ownership or other rights (of whatever nature) in the Software or in any copies of it, save for your permission to use the Software under licence as set out in this clause 6.

### 7. Download

- 7.1 Once you have placed your user licence order and we have accepted it (see clause 4), the Software will be available for you to download as notified to you by us.
- 7.2 If something happens which is outside of our control and affects your ability to download the Software, we will endeavour to inform you as to when you can expect to be able to resume the downloading of the Software.

### 8 Payment

- 8.1 You can make payment to us in the ways described on our Site.
- 8.2 We will do all that we reasonably can to ensure that all of the information you give us when paying for the Software user licence is secure by using an encrypted secure payment mechanism. However, in the absence of negligence on our part, any failure by us to comply with these Terms or our Privacy Policy (see clause 3) or breach by us of our duties under applicable laws, we will not be legally responsible to you for any loss that you may suffer if a third party gains unauthorised access to any information that you give us.
- 8.3 You will only be charged once your order of the Software user licence has been accepted, at which point we will notify you and make the Software available to you to download.
- 8.4 All payments by credit card or debit card need to be authorised by the relevant card issuer, and may require us to take additional security steps to process payment.
- 8.5 All prices are in pounds sterling (£)(GBP) and include VAT at the applicable rate in your country.

### 9 Nature of the Software

- 9.1 The Consumer Rights Act 2015 gives residents of the United Kingdom certain legal rights (also known as 'statutory rights'). The Software that we provide to you must be as described, fit for purpose and of satisfactory quality.
- 9.2 When we supply the Software:
  - 9.2.1 we will use reasonable efforts to ensure that it is free from defects, viruses and other malicious content but without any warranty of any sort;
  - 9.2.2 we do not promise that it is compatible with any third party software or equipment; and

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9.2.3 you acknowledge that there may be minor errors or bugs in it, or downtime in respect of the Software or related services, and you acknowledge that we will not provide technical support to you.

### 10 Faulty Software

10.1 Nothing in this contract affects residents of the United Kingdom's legal rights under the Consumer Rights Act 2015. You may also have other rights in law.

10.2 If your Software is faulty, please contact us using the contact details at the top of this page.

10.3 Notwithstanding, to avoid faults in the Software, you must:

10.3.1 comply with all instructions on how to use the Software;

10.3.2 install any fixes as soon as reasonably possible after we tell you that they are available to be downloaded;

10.3.3 use it only on the recommended equipment with the recommended software.

### 11 Limitation on our liability

11.1 Except for any legal responsibility that we cannot limit or exclude in law (such as for death or personal injury), we are not legally responsible for any:

11.1.1 losses that were not foreseeable to you and us when the contract was formed;

11.1.2 losses that were not caused by any breach on our part;

11.1.3 business losses; or

11.1.4 losses to non-consumers.

### 12 Third party rights

No one other than a party to these Terms has any right to enforce any of those.

### 13 Disputes

13.1 We will try to resolve any disputes with you quickly and efficiently. If you are unhappy with your purchase, our service to you or any other matter, please contact us as soon as possible using the contact details set out at the top of these terms.

13.2 If a dispute cannot be resolved through discussions with us, you may want to use alternative dispute resolution (ADR). ADR is a process for resolving disputes between you and us that does not involve going to court.

13.3 If you do not wish to use ADR or are unhappy with the outcome of ADR, you can still bring court proceedings.

13.4 The laws of England and Wales apply to these Terms.

13.5 Any disputes will be subject to the exclusive jurisdiction of the courts of England and Wales, any proceedings taken must be conducted in the English language.