



Flywheel Data LLC Terms & Conditions

Last updated: 8/28/2023

These Terms & Conditions ("Agreement") govern the relationship between Flywheel Data LLC ("Flywheel Data"), a value-added reseller ("VAR") with its principal place of business in Virginia, United States, and any individual or entity ("Customer") who purchases products or services from Flywheel Data. By engaging in any transaction with Flywheel Data or otherwise using the products or services provided by Flywheel Data, the Customer agrees to be bound by the terms of this Agreement.

Definitions, Acronyms, and Abbreviations

Authorized Aftermarket Manufacturer means an organization that fabricates a part under a contract with, or with the express written authority of, the OEM based on the OEM's designs, formulas, or specifications.

Authorized Supplier means a supplier, distributor, or Authorized Aftermarket Manufacturer with a contractual arrangement with, or the express written authority of, the OEM or current design activity, or who has otherwise been identified as trustworthy by Flywheel Data, the OEM, or the current design activity, to buy, stock, repackage, sell or distribute the product, item or service.

Counterfeit Item means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Information shall mean any and all documentation or information relating to or arising out of the Products. Such information includes, but is not limited to, any and all embodiments and representations of Intellectual Property Rights and any Trade Secrets (as defined in the Restatement of Torts).

Original Equipment Manufacturer (OEM) means a company that manufactures products that it has designed and sells those products under the company's brand name.

Value-Added Reseller (VAR) is a company that resells software, hardware and other products and services that provide value beyond the original order fulfillment. VARs often package and customize third-party products, services, or knowledge to add value and resell them with additional offerings bundled in.

Capitalized terms used but not defined herein shall have the meaning as set forth in the FAR.



Products and Services

Flywheel Data is a VAR offering a range of information technology, data management and analytics, storage, hardware and software products and services which may include, but are not limited to, software licenses, subscriptions, data integration solutions, consulting services, and other related offerings (the "Products").

The Customer acknowledges that Flywheel Data sources its Products from OEMs, Authorized Suppliers, or reputable third-party suppliers or partners. Flywheel Data will use its best efforts to ensure the quality and reliability of the Products but makes no representations or warranties as to the quality or reliability of those Products except as otherwise expressly set forth herein.

Orders

The Customer may place an order for Products (an "Order") by submitting a written purchase order specifying the type and quantity of Products desired and any other data or information requested by Flywheel Data, unless another method of ordering has been specifically authorized by Flywheel Data.

Orders are subject to acceptance by Flywheel Data, and Flywheel Data reserves the right to refuse any Order in its sole discretion. The Customer may not cancel an Order after such Order has been accepted by Flywheel Data.

Pricing

Quoted prices are valid for the specified period, or 30 days from the date of the quote if no validity period is specified. Prices quoted in currencies other than US Dollars are subject to change due to currency fluctuations.

Prices quoted are exclusive of taxes, handling, shipping, transportation, duties, and other charges or fees related to the sale and delivery of Products. The customer is responsible for all such charges and shall pay all such amounts promptly unless it has provided Flywheel Data with a satisfactory valid tax exemption certificate authorized by the appropriate taxing authority prior to shipment.

Prices shall be determined by Flywheel Data in its sole discretion and may be modified from time to time by Flywheel Data. Price changes shall take effect on the date of notification to Customer unless otherwise specified by Flywheel Data; provided, however, that such changes shall not apply to Orders which have already been accepted by Flywheel Data prior to the date of such change.



Payment

The payment terms listed on any Flywheel Data quote are non-binding and based on the assumption that there is an established relationship between Flywheel Data and the Customer and that the Customer has a credit application on file. If such a relationship has not yet been established and/or a credit application is not on file, Customer shall contact its Flywheel Data sales representative to verify or initiate the process. Please note that payment terms are subject to change at any time without prior notice.

Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice. Flywheel Data may invoice parts of an order separately. The Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or at the highest rate allowed by law. The Customer may not deduct any amounts owing from any invoice. Any sales, use or other applicable tax is based on the location to which the order is shipped. In the event of a payment default, the Customer will be responsible for all of Flywheel Data's costs of collection, including court costs, filing fees and attorney's fees. Notwithstanding any term or provision to the contrary in any agreement between Flywheel Data and Customer or between Customer and any third party, the payment terms set forth in any invoice shall not be subject to any "pay when paid" or other similar term, provision or concept unless expressly agreed to in writing by an authorized representative of Flywheel Data.

Delivery and Title

Delivery obligations of Flywheel Data (including the delivery location and estimated delivery date) shall be as set forth in the applicable order.

Flywheel Data will make reasonable efforts to deliver the Products within the estimated timeframe. However, Customer acknowledges and agrees that delivery dates are estimates and not guaranteed.

Title and risk of loss or damage to the Products pass to the Customer upon delivery. The Customer is responsible for inspecting the Products upon receipt and promptly notifying Flywheel Data of any concerns within five days of the date of delivery.

Returns and Refunds

Generally, Flywheel Data does not accept any returns of, or issue refunds for, Products, except in the instance where a refund or return is requested by Customer in writing and determined in Flywheel Data's sole discretion to be appropriate (such as in the case of a defective Product). If Flywheel Data agrees, in its sole discretion, that a return or refund is appropriate, the following terms apply to such refund or return:

- 1) returned Products must be in their original condition, unopened, and accompanied by all original packaging and documentation.
- 2) Flywheel Data reserves the right to charge a 10% restocking fee for returned Products.
- 3) Refunds will be issued using the same payment method used for the original purchase, unless otherwise agreed upon.



Quotes for US Government

The Products qualify as “commercial products” or “commercial services” as those terms are defined in FAR 2.101. Only those FAR and DFAR clauses which are required to be inserted in subcontracts for commercial products or commercial services shall apply to this Agreement. Flywheel Data is exempt from the Cost Accounting Standards pursuant to 48 CFR 9903.201-1(b)(6). Use, duplication, or disclosure of the Products to and by the U.S. Government shall be limited in accordance with FAR 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. Customer shall, and hereby agrees to, take all necessary steps to limit the rights and information relating to the Products that are furnished to the U.S. Government to the fullest extent possible.

License Terms:

Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, end users must accept the terms of all of Flywheel Data’s End-User-License-Agreement(s), Terms of Service, Terms of Sale, Support Terms, Maintenance Terms and similar legal instruments (collectively, “EULA”), prior to using any products and services provided or sold by Flywheel Data.

Regulatory Compliance:

Flywheel Data relies solely on the Information provided by the OEM and/or Authorized Suppliers when completing and complying with any representations and certifications, reporting requirements and regulatory compliance matters related to the Products. Without limiting the generality of the foregoing:

- The Trade Agreements Act (“TAA”) compliance status of the Products listed on the quote is the most current information provided by the OEM to Flywheel Data.
- Electronic & Information Technology (“EIT”) Accessibility Requirements of Section 508 of the Rehabilitation Act of 1973 (“Section 508”). Upon request, Flywheel Data will request an OEM’s Voluntary Product Assessment Template (“VPAT”) that discloses compliance with Section 508.
- Flywheel Data must separately acknowledge compliance with additional requirements such as Energy Star, EPEAT, IPv6, NIST, FIPS, FISMA, HIPAA, and similar requirements.

Flywheel Data offers no certifications, whether expressed or implied, as to the accuracy or completeness of the Information provided by the OEM.

Counterfeit Parts:

Flywheel Data sources components, parts, and items exclusively from the OEM, Authorized Suppliers, or suppliers that obtains parts, components, or items from the OEM or Authorized Suppliers. Flywheel Data requires immediate notification of any actual or suspected Counterfeit Item or of any information of which Customer, the OEM, or any Authorized Supplier is aware which may bear on the authenticity of any Product.

Conflict Minerals:

Flywheel Data is a privately held company, that provides its own logistics and professional services, and is not subject to Section 1502 of the Dodd-Frank Act (“Section 1502”). However, Flywheel Data is subject to



DFARs 252.225-7052, Restriction on the Acquisition of Certain Magnets, Tantalum, and Tungsten, and will, upon written request from the Customer, provide a reporting template to any non-public OEMs that are not already participating in programs to avoid the use of conflict minerals in compliance with all Federal acquisition requirements and regulations.

Executive Compensation Reporting:

Flywheel Data is registered in SAM.gov and maintains that registration as required by applicable law and regulation. Flywheel Data's SAM.gov registration contains all relevant and required executive compensation information necessary to comply with filing and reporting requirements in accordance with FAR 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards.

Warranty and Limitation of Liability

Flywheel Data makes no warranties, either express or implied, regarding the Products, except as expressly stated in any written warranty provided by the OEM or specified in a separate agreement between Flywheel Data and the Customer.

Flywheel Data's entire liability and Customer's exclusive remedy against Flywheel Data for any claim, whether in contract, tort, or otherwise, arising out of or in connection with (1) the purchase, use, or performance of the Products shall be limited to direct damages in the amount paid by the Customer for the specific Product giving rise to the claim; and (2) the performance or non-performance of any obligation under this Agreement shall be limited to direct damages in an amount not to exceed the amount paid by Customer to Flywheel Data in the 12-month period that immediately preceded the event giving rise to the applicable claim.

IN NO EVENT SHALL FLYWHEEL DATA BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR OTHER INDIRECT DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, BUSINESS OPPORTUNITIES, OR REVENUES OF ANY KIND, WHETHER OR NOT FLYWHEEL DATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

To the maximum extent permitted by law, Customer shall indemnify, defend, and hold Flywheel Data harmless from an against any and all damages, claims or liabilities (including, without limitation, attorneys' fees) arising from or in connection with Customer's (a) performance or non-performance of any obligation in this Agreement; or (b) use of any Product in a manner other than as authorized under this Agreement or any applicable EULA.

Intellectual Property

Intellectual Property Rights (IPRs) include, but are not limited to, know-how, trademarks, copyrights, patents, patent applications, trade secrets, trade dress, customer lists, instructions, improvements, modifications, suggestions, proposals, programs, ideas, writings, and any other proprietary information. This includes any embodiment of these IPRs, such as assembly and detailed drawings, plans, specifications, results of technical investigations and research, assembly, and parts manuals.



All IPRs related to the Products belong to and shall remain the sole and exclusive property of their respective owners. The Customer shall not reproduce, modify, distribute, or use any IPRs of the Products without obtaining the necessary permissions from the respective owners. Any suggestions, improvements, or other feedback provided by Customer to Flywheel Data regarding any Product shall be the exclusive property of Flywheel Data.

Confidentiality

Both Flywheel Data and Customer agree to treat any confidential information disclosed during the course of their business relationship as confidential and to use such information solely for the purposes of fulfilling their obligations under this Agreement.

Confidential Information means any technical or business information that: (i) is disclosed in writing by one party to the other party and is marked "confidential" or "proprietary" at the time of such disclosure; (ii) is disclosed orally by one party to the other party, is identified as "confidential" or "proprietary" at the time of such disclosure; or (iii) the Receiving Party knows or has reason to know under the circumstances should be treated as confidential or proprietary.

Confidential Information will not include information that: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the Receiving Party; (ii) is known by the Receiving Party prior to receiving such information from the Disclosing Party and without restriction as to use or disclosure; (iii) is rightfully acquired by the Receiving Party from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party.

Each party shall (a) hold such Confidential Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information (but in no case less than reasonable care); (b) restrict use and disclosure of Confidential Information to only those employees with a need to know and who have been advised of their obligations with respect to the Confidential Information; (c) not copy, reverse engineer, duplicate or decompile Confidential Information; and (d) upon expiration or termination of this Agreement, and at the disclosing party's option, destroy or return Confidential Information to the disclosing party. The obligation of confidentiality shall survive the termination of any Agreement.

Exclusions and Limitations

The information contained on Flywheel Data's website and in this Agreement is provided on an "as-is" basis. To the fullest extent permitted by law, Flywheel Data:

- exclude all representations and warranties with respect to this Agreement and Flywheel Data's website and its content or that are or may be provided by affiliates or any other third party, including with respect to any inaccuracy or omission in Flywheel Data's website and/or the Flywheel Data's documentation; and



- exclude any liability for damages arising out of or in connection with Customer's use of Flywheel Data's website. Flywheel Data, and Flywheel Data's suppliers and distributors, will not be responsible for lost profits, revenues, or data, financial losses or indirect, special, consequential, exemplary, punitive damages or damages caused to Customer's computer, computer software, systems and programs and data relating thereto or any other direct or indirect, consequential or incidental damages.

Links to this website

Customer may not create a link to a page on Flywheel Data's website without Flywheel Data's prior written consent. If Customer links to any page on Flywheel Data's website, Customer does so at its own risk and the exclusions and limitations set out above apply to Customer's use of the website.

Copyright Notice

The brand names and specific services of Flywheel Data featured on its website are trademarked.

Force Majeure

Neither party shall be liable to the other for any failure to perform any obligation under any Agreement which is due to an event beyond the control of such party including but not limited to any act of God, terrorism, war, political insurgence, insurrection, riot, civil unrest, act of civil or military authority, uprising, earthquake, flood or any other natural or manmade eventuality outside of such party's control and which could not have been reasonably foreseen. Any Party affected by such event shall forthwith inform the other Party of the same and shall use all reasonable endeavors to comply with the terms and conditions of this Agreement.

Export Controls and Compliance with Laws

The Parties shall comply with all statutes and regulations applicable to this Agreement. Each Party shall comply with United States and foreign export control laws and regulations. Company acknowledges that certain Products provided pursuant to this Agreement may be subject to the U.S. Export Administration Regulations (the "EAR") and that Customer will comply with and ensure any end customer making any order for Products will agree to comply the EAR. Without limiting the foregoing, Customer represents and warrants that: (i) Customer is not located in, and shall not act as a reseller of the Products in, any country that is subject to U.S. export restrictions (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan and Syria), (ii) Customer will not, use the Products in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, sounding rockets or unmanned air vehicle systems, and (iii) Customer will not act as a reseller of the Products to any end customer that is prohibited from participating in U.S. export transactions by any federal agency of the U.S. Government. Each Party will perform its obligation under this Agreement in compliance with all applicable anti-corruption laws, including without limitation the US Foreign Corrupt Practices Act, the UK Bribery Act, and the Israeli anti-corruption laws.



Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the state of Virginia, United States, without regard to its conflict of law provisions.

Any disputes arising out of or in connection with this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts located within the state of Virginia.

Waiver

Failure of either Party to insist upon strict performance of any provision of this or any Agreement or the failure of either Party to exercise any right or remedy to which it, s/he or they are entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations under this or any Agreement. No waiver of any of the provisions of this or any Agreement shall be effective unless it is expressly stated to be such and signed by both Parties.

About these Terms

Flywheel Data reserve the right to modify these terms or any additional terms that apply to a Product to, for example, reflect changes to the law or changes to the Products. Customer should look at the terms regularly. If a revision is material, Flywheel Data will try to provide at least 30 days' notice prior to any new terms taking effect. What constitutes a material change will be determined at Flywheel Data's sole discretion.

We will post notice of modifications to these terms on its website. Flywheel Data will post notice of modified additional terms in the applicable Product. Changes will not apply retroactively and will become effective no sooner than 30 days after they are posted. However, changes addressing new functions for a Product or changes made for legal reasons will be effective immediately. If Customer does not agree to the modified terms for a Product, Customer must discontinue its use of that Product.

If there is a conflict between this Agreement and the additional terms applicable to any Product, the additional terms will control for that conflict.

This Agreement controls the relationship between Flywheel Data and Customer. It does not create any third-party beneficiary rights.

If any term of this Agreement is found to be invalid or unenforceable, then the meaning of that term shall be construed so as to render it enforceable to the extent feasible, while giving effect to the intention of the parties to the extent possible. All other terms and conditions shall remain in full force and effect.

The term of this Agreement is while any Product is under Customer's control or possession.

Flywheel Data may terminate this Agreement (i) for its convenience by giving Customer thirty (30) days' prior written notice; or (ii) by giving Customer a written notice to be immediately effective in the case of Customer's material or continuous breach of this Agreement ("continuous" meaning two or more occurrences of the same breach). Customer's obligations under this Agreement shall survive expiration or termination of this Agreement.



The parties intend to create an independent contractor relationship, and nothing contained in this Agreement shall be construed to make either Flywheel Data or Customer partners, joint venturers, representative, agents, or employees of the other. Neither party shall have the right, power, or authority, express or implied, to bind the other.

Each party represents, warrants, and undertakes that it has and shall continue to have full ability, capacity, and authority required by law or otherwise to enter into and to perform its obligations under this Agreement.

Customer will not directly or indirectly use, resell, deliver, transfer, lend, or otherwise make available the Product to any third party, including but not limited to any competitor of Flywheel Data, without the express written consent of an authorized representative of Flywheel Data.

Contact Us

If you have any questions about these Terms, please contact us at contracts@flywheeldata.com.