

# Fab Hunter Ltd Subscription Agreement

## 1 About our Terms

1.1 This Subscription Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("you" or "your"), and Fab Hunter Ltd ("Fab Hunter Ltd", "we", "us", or "our"). It consists of the terms and conditions below, as well as the Website Terms of Use, for your Subscription or renewal (together, the "agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed, as applicable.

## 2 Definitions

- 2.1 "Acceptable Use Policy" means the policy found here: <http://fabhunter.com/acceptable-use/>
- 2.2 "Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.
- 2.3 "Buyer Subscriber" means any subscriber to the Services seeking goods and/or services from a Supplier Subscriber;
- 2.4 "Customer Data" means all data, including all text, sound, video, or image files, and software, that are provided to Fab Hunter Ltd by, or on behalf of, Subscriber through use of the Online Services.
- 2.5 "End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services;
- 2.6 "Offer Details" means the pricing and related terms applicable to a Subscription offer, as published in the Site;
- 2.7 "Online Services" means any of the Fab Hunter Ltd-hosted services to which you subscribe under this agreement;
- 2.8 "Site" means [www.Fabhunter.com](http://www.Fabhunter.com) , and all associated web pages and/or applications.
- 2.9 "Subscriber" means either a Supplier Subscriber or a Buyer Subscriber that has subscribed for the Services;
- 2.10 "Subscription" means an enrolment for Online Services for a defined Term as specified on the Site. You may purchase multiple Subscriptions, which may be administered separately, and which will be governed by the terms of a separate Fab Hunter Ltd Subscription Agreement.
- 2.11 "Supplier Subscriber" means any subscriber to the Services seeking to supply goods and/or services to a Buyer Subscriber.

2.12 "Term" means the duration of a Subscription which shall be for a minimum period of 12 months.

### **3 Use of Online Services**

3.1 We grant you the right to use and access the Online Services. We reserve all other rights.

3.2 You may use the Online Services only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Online Services, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Online Services, or any portion thereof, to or for third parties except as expressly permitted in this agreement.

3.3 You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Fab Hunter Ltd to you or to any third party. Fab Hunter Ltd does not and will not assume any obligations with respect to Customer Data or to your use of the Online Services other than as expressly set forth in this agreement or as required by applicable law.

3.4 You control access by End Users, and you are responsible for their use of the Online Services in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.

3.5 You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.

3.6 If you use an email address provided by an organization you are affiliated with to order Online Services, you represent that you have authority to use that organization's domain to sign up for a Subscription in your capacity as a member of that organization. The organization, as the owner of the domain associated with your email address, may assume control over and manage your use of the Online Services. In such a case, your organization's designated administrator (your "admin") may (i) control and administer your account, including modifying and terminating your access and (ii) access and process your data, including the contents of your communications and files. Fab Hunter Ltd may inform you that your organization has assumed control of the Online Services covered by your Subscription, but Fab Hunter Ltd is under no obligation to provide such notice. If your organization is administering your use of the Online Services or managing the tenant associated with your Subscription, direct your data subject requests and privacy inquiries to your administrator. If your organization is not administering your use of the Online Service or managing such tenant, direct your data subject requests and privacy inquiries to Fab Hunter Ltd.

3.7 Fab Hunter Ltd is entitled in its absolute discretion to reject or exclude an advertisement or information submitted or previously accepted to run on the website.

## **4 Subscription**

- 4.1 By ordering or renewing a Subscription, you agree to the Offer Details for that Subscription. Unless otherwise specified in those Offer Details, Online Services are offered on an "as available" basis.
- 4.2 Payments are due and must be made according to the Offer Details for your Subscription.
- 4.3 During the Term of your Subscription, prices for Online Services will not be increased, as to your Subscription, from those posted on the Site at the time your Subscription became effective or was renewed, except where prices are identified as temporary in the Offer Details. All prices are subject to change at the beginning of any Subscription renewal.
- 4.4 Your Subscription will automatically renew unless you tell us that you do not want it to in accordance with clause 6.3. Upon renewal of your Subscription, this agreement will terminate, and your Subscription will thereafter be governed, by the terms and conditions set forth on the Site on the date on which your Subscription is renewed (the "**Renewal Terms**"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.

## **5 Subscriber Obligations**

- 5.1 Subscribers shall at all times:
  - 5.1.1 Co-operate with Fab Hunter Ltd to enable Fab Hunter Ltd to provide the Online Services;
  - 5.1.2 Obtain all necessary permissions and consents which may be required before the commencement of the Online Services.
  - 5.1.3 Ensure that all information it provides Fab Hunter Ltd is accurate, not misleading, genuine and provided with all necessary consents and authority.

## **6 Term, Termination & Suspension**

- 6.1 This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.
- 6.2 You may not terminate a Subscription at any time during its Term; however, you may be entitled to terminate during any trial period set out in your Offer Details but you must pay all amounts due and owing before the termination is effective.
- 6.3 Your Subscription will automatically renew for a further Term unless you tell us that you do not want it to in writing and at least 30 days prior to the then current Term expiring.
- 6.4 We may suspend your use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under clause 10.2 within a reasonable time; (3) you do not pay amounts due under this agreement; or (4) you do not abide by the Acceptable Use

Policy or you violate other terms of this agreement. If one or more of these conditions occurs, then a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period.

## **7 Fab Hunter Ltd Warranties & Exclusions**

- 7.1 Limited warranty: The Services shall be performed in accordance with Good Industry Practice and the Services performed shall be free from material defects.
- 7.2 This limited warranty does not cover problems caused by accident, abuse or use of the Online Services in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control.
- 7.3 this limited warranty does not apply to problems caused by a failure to meet minimum system requirements.
- 7.4 **DISCLAIMER.** Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.
- 7.5 Each Supplier Subscriber shall be required to register their specific skills and areas of specialism so that any customer enquiry can be properly directed to the correct and relevant supplier. Fab Hunter Ltd shall not, nor shall have any obligation to, review or verify any requirement nor the skills or quality of work of the Supplier Subscribers. Fab Hunter Ltd shall only post the information provided to it by its Subscribers (subject to any immaterial adjustment or formatting to enable it to appear on the website or email messaging to the relevant potentially interested Subscriber). Fab Hunter Ltd is not responsible for the contents of such information provided to it from a Supplier, nor for verifying the accuracy, suitability or intentions behind the information provided.
- 7.6 Once the introduction between the Supplier Subscriber and Buyer Subscriber has been made it is entirely up to those Subscribers to conclude any contract for services or the engagement to fulfil the project requirements. Fab Hunter Ltd shall not be responsible for the provision of such services or the payment for such services.
- 7.7 Accepting a Subscriber or by posting or sending a Subscriber's information on the Site or to other Subscribers does not in any way mean that Fab Hunter Ltd endorses or guarantees that Subscriber, the services that Subscriber purports they can provide or the financial viability of the Subscriber requesting goods or services.

## **8 Subscriber Warranties**

- 8.1 The Subscriber warrants that:

- 8.1.1 it has the right to publish all of the information it provides to Fab Hunter Ltd and can grant Fab Hunter Ltd such right to publish the information on the Site;
- 8.1.2 the information provided to Fab Hunter Ltd for publication is original material belonging to the Subscriber;
- 8.1.3 Fab Hunter Ltd.'s use, reproduction, distribution, or transmission of information provided by the Subscriber on the Site will not and does not infringe any third-party rights;
- 8.1.4 the information does not contain material that includes false advertisements, unfair competition, defamatory material, invasions of privacy or rights of celebrity, or violations of any anti-discrimination law or regulation; and
- 8.1.5 the provision of the Online Services by Fab Hunter Ltd, using the information provided by the Subscriber, will not infringe any third-party rights.

## **9 Intellectual Property**

- 9.1 The Subscriber hereby grants Fab Hunter Ltd a world-wide, non-exclusive, royalty-free licence to reproduce and display any information provided by the Subscriber to Fab Hunter Ltd for the purpose of providing the Online Services in accordance with this agreement.
- 9.2 All intellectual property rights in the information created or written by or on behalf of the Subscriber shall be and will remain the absolute property of the Subscriber.
- 9.3 Neither party will gain by virtue of this agreement any rights of ownership of or in any copyright, patents, trade secrets, trademarks or other intellectual property or proprietary rights owned by the other.

## **10 Defence of Claims**

- 10.1 We will defend you against any claims made by an unaffiliated third party that an Online Service infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- 10.2 You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data, or services you provide, directly or indirectly, in using the Online Services infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from violation of the Acceptable Use Policy.
- 10.3 Our obligations in clause 10.1 will not apply to a claim or award based on: (i) any Customer Data, or services or materials you provide or make available as part of using the Online Services; (ii) your combination of the Online Services with, or damages based upon the value of, Customer Data or data, or business process; (iii) your use of a Fab Hunter Ltd trademark without our express written consent, or your use of the Online Services after we notify you to stop due to a third-party claim; (iv) your

redistribution of the Online Services to, or use for the benefit of, any unaffiliated third party; or (v) services or products provided free of charge.

- 10.4 If we reasonably believe that a claim under clause 10.1 may bar your use of the Online Services, we will seek to: (i) obtain the right for you to keep using them; or (ii) modify or replace them with a functional equivalent and notify you to stop use of the prior version. If these options are not commercially reasonable, we may terminate your rights to use the Online Services and then refund any advance payments for unused Subscription rights.
- 10.5 Each party must notify the other promptly of a claim under this clause. The party seeking protection must (i) give the other sole control over the defence and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defence and payment of judgments (or settlement the other consents to) under this clause are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

## **11 Limitation of Liability**

- 11.1 The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Online Services during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Services exceed the amount paid for that Online Service during the Subscription.
- 11.2 In no event will either party be liable for loss of revenue or loss of anticipated savings (in either case whether direct or indirect), indirect, incidental, special, punitive, or consequential damages, loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.
- 11.3 The limits of liability in this clause apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under clause 8; or (2) violation of the other's intellectual property rights.
- 11.4 In any case where the law of England and Wales applies per the terms of the Agreement or the determination of a court, nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

## **12 General**

- 12.1 **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Fab Hunter Ltd must be sent to the following address:

Fab Hunter Ltd, Hamsterley View, Low Westwood, Newcastle, Tyne & Wear NE17 7PX

Notices to you will be sent to the address that you identify on your account as your contact for notices. Fab Hunter Ltd may send notices and other information to you by email or other electronic form.

- 12.2 **License Transfers and Assignment.** You may not assign this agreement either in whole or in part or transfer licenses without Fab Hunter Ltd.'s consent.
- 12.3 **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- 12.4 **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- 12.5 **No agency.** This agreement does not create an agency, partnership, or joint venture.
- 12.6 **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- 12.7 **Applicable law and venue.** This agreement is governed by the laws of England & Wales and subject to the exclusive jurisdiction of the courts of England and Wales.
- 12.8 **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Fab Hunter Ltd Online Subscription Agreement, (2) the Fab Hunter Ltd Website Terms, (3) the applicable Offer Details, and (4) any other documents in this agreement.
- 12.9 **Survival.** The terms in clauses 2, 3, 3.4, 3.5, 7, 8 and 11 will survive termination or expiration of this agreement.
- 12.10 **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This clause will not, however, apply to your payment obligations under this agreement.
- 12.11 **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a Subscription purchase or renewal, that entity will be treated as the owner of the Subscription for purposes of this agreement.