

Software download terms and conditions

1. Introduction

- 1.1 These terms and conditions shall govern the sale and supply of downloadable software programs through our website, and the use of those software programs.
- 1.2 You will be asked to give your express agreement to these terms and conditions before you place an order on our website.
- 1.3 This document does not affect any statutory rights you may have as a consumer.

2. Interpretation

- 2.1 In these terms and conditions:
 - (a) "we" means Fastnetmon LTD (and "us and "our" should be construed accordingly);
 - (b) "you" means our customer or prospective customer under these terms and conditions (and "your" should be construed accordingly);
 - (c) "software programs" means those software programs that are available for purchase on our website; and
 - (d) "your software programs" means any such software programs that you have purchased through our website (including any enhanced or upgraded version of the software programs that we may make available to you from time to time).

3. Order process

- 3.1 The advertising of software programs on our website constitutes an "invitation to treat" rather than a contractual offer.
- 3.2 No contract will come into force between you and us unless and until we accept your order in accordance with the procedure set out in this Section 3.
- 3.3 To enter into a contract through our website to purchase downloadable software programs from us, the following steps must be taken: if you are a new customer, you must then create an account with us with your real name and email at <https://fastnetmon.zendesk.com> and log in; if you are an existing customer, you must enter your login details; then you need to express your desire to buy our product using "Submit a request" form; you need to provide full information about your company, amount of traffic in your network, required number of tool instances and number of sFlow/Netflow/IPFIX capable devices in your network; then we will issue price quote using provided details; then you must consent to the terms of this document; and we will provide payment link for you; using this link you will be transferred to our payment service provider's website, and our payment service provider will handle your payment; we will then send you an initial acknowledgement; and we will either send you an order confirmation (at which point your order will become a binding contract) or we will confirm by email that we are unable to meet your order.
- 3.4 You will have the opportunity to identify and correct input errors prior to making your order.

4. Prices

- 4.1 Our prices are quoted for each particular case based on your total incoming and outgoing network bandwidth and on number of generating devices (sFlow/Netflow/IPFIX) or number of ports (port mirror mode)
- 4.2 We will from time to time change the prices, but this will not affect contracts that have previously come into force.

5. Payments

- 5.1 You must, during the payment process, pay the prices of the software programs you order. We provide per month charge scheme and you will be charged automatically until you cancel your subscription.
- 5.2 Payments may be made by any of the permitted methods specified on our website from time to time.

6. Licensing of software

- 6.1 We will supply your software programs to you in the format or formats specified on our website, and by such means and within such periods as are specified on our website.
- 6.2 Subject to your payment of the applicable price and compliance with these terms and conditions, we grant to you a worldwide, non-exclusive, non-transferable licence to make any use of your software programs permitted by Section 6.3, providing that you must not in any circumstances make any use of your software programs that is prohibited by Section 6.4.
- 6.3 The "permitted uses" of your software programs are:
 - (a) downloading a copy of each of your software programs;
 - (b) installing a copy of each of your software programs on not more than a number of computers allowed by particular license type;
 - (c) creating a single back-up copy of each of your software programs; and
 - (d) using your software programs in accordance with the documentation incorporated into the downloads and available on official site.
- 6.4 The "prohibited uses" of your software programs are:
 - (a) the publication, sale, licensing, sub-licensing, renting, transferring, transmission, broadcasting, distribution or redistribution of any software program (or part thereof) in any format;
 - (b) the editing, modification, adaptation or alteration of any software program (or part thereof), and the creation of any derivative work incorporating any software program (or part thereof);
 - (c) the use of any software program (or part thereof) in any way that is unlawful or in breach of any person's legal rights under any applicable law, or in any way that is offensive, indecent, discriminatory or otherwise objectionable;
 - (d) the use of any software program (or part thereof) to compete with us, whether directly or indirectly;

- (e) the reverse engineering, decompilation or disassembly of any software program (or part thereof); and
- (f) the circumvention or removal of, or any attempt to circumvent or remove, the technological measures applied to any software program for the purpose of preventing unauthorised use,

providing that nothing in this Section 6.4 will prohibit or restrict you or any other person from doing any act expressly permitted by applicable law.

- 6.5 You warrant to us that you have access to the necessary computer systems, media systems, software and network connections to receive and enjoy the benefit of your software programs.
- 6.6 All intellectual property rights and other rights in the software programs not expressly granted by these terms and conditions are hereby reserved.
- 6.7 You must retain, and must not delete, obscure or remove, copyright notices and other proprietary notices on or in any software program.
- 6.8 The rights granted to you in these terms and conditions are personal to you, and you must not permit any third party to exercise these rights.
- 6.9 If you breach any provision of these terms and conditions, then the licence set out in this Section 6 will be automatically terminated upon such breach.
- 6.10 You may terminate the licence set out in this Section 6 by deleting all copies of the relevant software programs in your possession or control.
- 6.11 Upon the termination of a licence under this Section 6, you must, if you have not previously done so, promptly and irrevocably delete from your computer systems and other electronic devices all copies of the relevant software programs in your possession or control, and permanently destroy any other copies of the relevant software programs in your possession or control.

7. Additional users

- 7.1 If you are a business, then your employees may use the software in accordance with Section 6, provided that you must ensure that any person using the downloads in accordance with this Section 7.1 is made aware of and complies with the requirements of Section 6.

8. Free trial

- 8.1 From time to time we may make available software programs on a free trial basis, and this Section 8 shall apply to such software programs.
- 8.2 Your rights to use of free trial software programs shall be restricted in such manner and/or to such period as we may specify when you download the software programs, and we may apply technological protection measures to the software programs to enforce these restrictions.
- 8.3 We may restrict your licence to use any free trial software program at any time, by giving you written notice of the restriction or activating the restriction in the relevant software program.
- 8.4 We may terminate your licence to use any free trial software program at any time, by giving you written notice of termination or deactivating the relevant software program.

9. Distance contracts: cancellation right

- 9.1 This Section 9 applies if and only if you offer to contract with us, or contract with us, as a consumer - that is, as an individual acting wholly or mainly outside your trade, business, craft or profession.
- 9.2 You may withdraw an offer to enter into a contract with us through our website, or cancel a contract entered into with us through our website, at any time within the period:
- (a) beginning upon the submission of your offer; and
 - (b) ending at the end of 14 days after the day on which the contract is entered into,
- subject to Section 9.3. You do not have to give any reason for your withdrawal or cancellation.
- 9.3 You agree that we may begin the provision of software programs before the expiry of the period referred to in Section 9.2, and you acknowledge that, if we do begin the provision of software programs before the end of that period, you will lose the right to cancel referred to in Section 9.2.
- 9.4 In order to withdraw an offer to contract or cancel a contract on the basis described in this Section 9, you must inform us of your decision to withdraw or cancel (as the case may be). You may inform us by means of any clear statement setting out the decision. In the case of cancellation, you may inform us using the cancellation form that we will make available to you. To meet the cancellation deadline, it is sufficient for you to send your communication concerning the exercise of the right to cancel before the cancellation period has expired.
- 9.5 If you cancel an order on the basis described in this Section 9, you will receive a full refund of the amount you paid to us in respect of the order.
- 9.6 We will refund money using the same method used to make the payment, unless you have expressly agreed otherwise. In any case, you will not incur any fees as a result of the refund.
- 9.7 We will process the refund due to you as a result of a cancellation on the basis described in this Section 9 without undue delay and, in any case, within the period of 14 days after the day on which we are informed of the cancellation.

10. Warranties and representations

- 10.1 You warrant and represent to us that:
- (a) you are legally capable of entering into binding contracts;
 - (b) you have full authority, power and capacity to agree to these terms and conditions; and
 - (c) all the information that you provide to us in connection with your order is true, accurate, complete, current and non-misleading.
- 10.2 We warrant to you that your software programs will be supplied to you with reasonable care and skill.

10.3 All of our warranties and representations relating to software programs are set out in these terms and conditions. To the maximum extent permitted by applicable law and subject to Section 11.1, all other warranties and representations are expressly excluded.

11. Limitations and exclusions of liability

11.1 Nothing in these terms and conditions will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law, and, if you are a consumer, your statutory rights will not be excluded or limited by these terms and conditions, except to the extent permitted by law.

11.2 The limitations and exclusions of liability set out in this Section 11 and elsewhere in these terms and conditions:

- (a) are subject to Section 11.1; and
- (b) govern all liabilities arising under these terms and conditions or relating to the subject matter of these terms and conditions, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in these terms and conditions.

11.3 We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

11.4 We will not be liable to you in respect of any business losses, including (without limitation) loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

11.5 We will not be liable to you in respect of any loss or corruption of any data, database or software.

11.6 We will not be liable to you in respect of any special, indirect or consequential loss or damage.

11.7 You accept that we have an interest in limiting the personal liability of our officers and employees and, having regard to that interest, you acknowledge that we are a limited liability entity; you agree that you will not bring any claim personally against our officers or employees in respect of any losses you suffer in connection with the website or these terms and conditions (this will not, of course, limit or exclude the liability of the limited liability entity itself for the acts and omissions of our officers and employees).

12. Variation

12.1 We may revise these terms and conditions from time to time by publishing a new version on our website.

12.2 A revision of these terms and conditions will apply to contracts entered into at any time following the time of the revision, but will not affect contracts made before the time of the revision.

13. Assignment

13.1 You hereby agree that we may assign, transfer, sub-contract or otherwise deal with our rights and/or obligations under these terms and conditions.

13.2 You may not without our prior written consent assign, transfer, sub-contract or otherwise deal with any of your rights and/or obligations under these terms and conditions.

14. No waivers

14.1 No breach of any provision of a contract under these terms and conditions will be waived except with the express written consent of the party not in breach.

14.2 No waiver of any breach of any provision of a contract under these terms and conditions shall be construed as a further or continuing waiver of any other breach of that provision or any breach of any other provision of that contract.

15. Severability

15.1 If a provision of these terms and conditions is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions will continue in effect.

15.2 If any unlawful and/or unenforceable provision of these terms and conditions would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect.

16. Entire agreement

16.1 Subject to Section 11.1, these terms and conditions, together with details of your particular license type, shall constitute the entire agreement between you and us in relation to the sale and purchase of our downloads and the use of those downloads, and shall supersede all previous agreements between you and us in relation to the sale and purchase of our downloads and the use of those downloads.

17. Law and jurisdiction

17.1 These terms and conditions shall be governed by and construed in accordance with English law.

17.2 Any disputes relating to these terms and conditions shall be subject to the non-exclusive jurisdiction of the courts of England.

18. Statutory and regulatory disclosures

18.1 We will not file a copy of these terms and conditions specifically in relation to each user or customer and, if we update these terms and conditions, the version to which you originally agreed will no longer be available on our website. We recommend that you consider saving a copy of these terms and conditions for future reference.

18.2 These terms and conditions are available in the English language only.

18.3 The website of the European Union's online dispute resolution platform is available at <https://webgate.ec.europa.eu/odr/main>.

19. Our details

19.1 This website fastnetmon.com is owned and operated by Fastnetmon LTD.

19.2 We are registered in England and Wales under registration number 10667417, and our registered office is at 20-22 Wenlock Road, London, N1 7GU.

19.3 You can contact us:

- (a) by post, using the postal address given above;
- (b) using our website contact form; or
- (c) by email, using the email address published on our website from time to time.