

TERMS AND CONDITIONS

Last Updated: March 4, 2019

Terms and Conditions of your use of this Website

These Terms and Conditions (“Terms”) govern the relationship between Fontem US, Inc. d/b/a blu eCigs (“blu,” “us,” “we” or “our”) and you regarding your access and use of all blu websites (collectively, the “Website”). These Terms are important and affect your legal rights, so please read them carefully. Note that these Terms contains a mandatory arbitration provision that requires the use of arbitration on an individual basis and limits the remedies available to you in the event of certain disputes.

IF YOU DO NOT AGREE TO THESE TERMS, YOU SHOULD IMMEDIATELY CEASE USE OF THIS WEBSITE.

This Website and your blu.com account

This Website is intended only for the use by adults who are the legal age to consume our vaping product. blu limits purchase of its product via its Website to individuals that are the legal vaping age. It is your responsibility to check and understand the local laws in your jurisdiction regarding the legal purchasing age in order to purchase from or access our Website. blu does not warrant or guarantee that compliance with these Terms of Service will be sufficient to comply with your obligations under applicable laws where you reside or where you use the Website.

If you create a blu.com account, you are responsible for maintaining the confidentiality of your account and password. By accessing or using the Website, you represent and warrant that you are of legal vaping age, and that you have not been previously suspended or removed from the Website, or engaged in any activity that could result in suspension or removal from the Website.

By creating an account, you consent to receive electronic communications from blu (e.g., via email or by posting notices to the Website). These communications may include notices about your account (e.g., payment authorizations, password changes and other transactional information) and are part of your relationship with us. You agree that any notices, agreements, disclosures or other communications that we send to you electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing. You should maintain copies of electronic communications from us by printing a paper copy or saving an electronic copy. We may also send you promotional communications via email, including, but not limited to, newsletters, special offers, surveys and other news and information we think will be of interest to you. You may opt out of receiving these promotional emails at any time by following the unsubscribe instructions provided therein.

Age Restriction. You must be of legal vaping age or older to access this Website. We restrict our Website and marketing contact list to individuals who have certified that:

1. they are vapers,

2. they are at least twenty-one (21) years old (or are at least eighteen (18) years old, meet other requirements and are of legal vaping age or older in their local jurisdiction),
3. they want to be added to our contact list in order to receive content, offers, and advertising from blu, and
4. they understand that providing false information may constitute a violation of law.

We take the prevention of underage use very seriously. blu vapor products and all other nicotine products should never be used by anyone under the legal age. Before a certified adult consumer is added to our marketing contact list or shipped any purchased product, we independently verify that the consumer is the legal vaping age or older. We reserve the right to restrict sales to adults at least twenty-one (21) years old, even in jurisdictions that allow sales to younger adults.

Additionally, no tobacco-based or nicotine product should be considered safe. If you have any health concerns about use of blu vapor products or any other tobacco product, we recommend that you consult with your physician.

CALIFORNIA PROPOSITION 65

WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

WARNING: This product can expose you to chemicals including formaldehyde, which is known to the State of California to cause cancer, and nicotine, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.

FDA WARNING: This product contains nicotine. Nicotine is an addictive chemical.

Geographic Restrictions. You agree that you will not access this Website from any territory where the content or use of the Website is illegal. You are solely responsible for complying with all applicable local laws.

You further acknowledge and agree that you must be of legal age to purchase or consume any of blu's vapor products or to participate in any of our promotions or other offers on this Website or otherwise.

License

Unless otherwise indicated in writing by us, the Website and all content and other materials contained therein, including, without limitation, the blu logo and all designs, text, graphics, pictures, information, data, software, User Content, other files and the selection and arrangement thereof (collectively, "Content") are the property of blu or our licensors or users, as applicable, and are protected by U.S. and international copyright and other laws.

Subject to these Terms, you are hereby granted a personal, non-exclusive, non-transferable, non-sublicensable license to access and make personal, non-commercial use of the Website and Content. All rights not expressly granted herein are reserved. You do not acquire any ownership interest in the Website or Content under these Terms, or any other rights thereto other than to use the Website in accordance with the license granted, and subject to all terms, conditions and restrictions of these Terms.

However, such license is subject to these Terms and does not include any right to, and you shall not, directly or indirectly: (a) sell, resell or use commercially the Website or Content, (b) distribute, publicly perform or publicly display any Content, (c) modify or otherwise make any derivative uses of

the Website or Content, or any portion thereof, (d) use any data mining, robots or similar data gathering or extraction methods, (e) download (other than page caching) any portion of the Website or Content, except as expressly permitted by us, (f) use the Website to stalk, threaten, or otherwise violate the rights of others, including without limitation others' privacy rights or rights of publicity; (g) interfere with the Website or servers or networks used in connection with the Website; or (h) use the Website or Content other than for their intended purposes.

Any use of the Website or Content other than as specifically authorized herein, without our prior written permission, is strictly prohibited and will terminate the license granted herein. Such unauthorized use may also violate applicable laws, including, without limitation, copyright and trademark laws and applicable communications regulations and statutes. Unless explicitly stated by us, nothing in these Terms shall be construed as conferring any right or license to any patent, trademark, copyright or other proprietary rights of blu or any third party, whether by estoppel, implication or otherwise. This license is revocable at any time.

Links

Although this Website may be linked to other Websites, blu does not endorse, approve, certify or sponsor the linked Website unless specifically stated therein. blu is not the owner of, does not control and is not responsible for any content of any Website linked to this Website. Your linking to other Websites is at your own risk.

Governing Law

This Website has been designed to comply with United States law. blu does not represent that the content of this Website is appropriate for locations outside the United States. If you access this Website from locations outside the United States, you are responsible for complying with all applicable local laws.

Privacy Statement

blu is committed to processing and protecting the personal data collected through the Website when you use the Website in compliance with its obligations under applicable privacy laws, laws governing the privacy of your personal data, including, if applicable to you, the European Union General Data Protection Regulation. blu's policy is to retain personal data necessary to provide our services, except that we may retain your personal data for longer periods where reasonably necessary to comply with our legal obligations (including law enforcement requests), meet regulatory requirements, resolve disputes, maintain security, prevent fraud and abuse, enforce these Terms, or fulfill your request to "unsubscribe" from further messages from us. This policy applies to personal data that you or others provided to us and personal data generated or inferred from your use of our services. When blu is the data controller, we will decide how your personal data is processed and for what purposes. For additional information about your rights and your personal data, what data is collected, how it is processed, protected, shared, and how long it is retained, please see the blu's Privacy Policy located at <https://www.blu.com/en/US/faqs/our-policies/Privacy-Policy.html>.

Where blu has a good faith belief that such action is necessary to comply with a judicial proceeding, court order, warrant, administrative order, civil investigative demand, subpoena, or other valid process, blu may disclose IP addresses, personal information, and any contents of the Website where it is legally compelled to do so.

Trademarks and Copyright

The copyrights to all contents of this Website are proprietary to blu or its third party licensors, and you may not reproduce, post on any other Website, modify, distribute or transmit any portion of this Website without the express written consent of blu. Any name, logo, trademark or service mark contained on this Website is owned or licensed by blu and may not be used by you without the prior written consent of blu. You may access this Website for your individual non-commercial use only.

Material you Submit

You are solely responsible and liable for all data, information and other materials (“User Content”) that you submit, upload, post, e-mail or otherwise transmit (“Transmit”) in connection with the Website. In addition, we have no control over, and shall have no liability for, any damages resulting from the use (including without limitation republication) or misuse by any third party of information made public through the Website. **IF YOU CHOOSE TO SUBMIT TO US, OR OTHERWISE MAKE ANY USER CONTENT PUBLICLY AVAILABLE, YOU DO SO AT YOUR OWN RISK AND WE SHALL HAVE NO LIABILITY THEREFOR.**

You agree that you will not, and will not permit anyone else to, directly or indirectly:

- Transmit any User Content that is unlawful, harmful, threatening, abusive, hateful, obscene, harassing, tortious, defamatory, libelous, slanderous, pornographic, profane, vulgar, offensive, lewd, invasive of another’s privacy or racially, ethnically or otherwise objectionable;
- Transmit any User Content: (i) that you do not have the right to Transmit, under any law or contractual or fiduciary relationships, including, without limitation, any inside information or proprietary or confidential information; (ii) that infringes any patent, copyright, trademark or other intellectual property right or misappropriates any trade secret or right of privacy of any third-party; (iii) that constitutes unsolicited or unauthorized advertising or promotional materials, “spam,” “chain letters,” or pyramid schemes; or (iv) that contains any software routine, code, instruction or virus that is designed to disable, delete, modify, damage or erase software, hardware or data;
- Forge headers or otherwise manipulate identifiers in order to disguise any User Content Transmitted through the Website.

Although we have no obligation to screen, edit or monitor User Content, we reserve the right, and have absolute discretion, to remove, screen or edit User Content posted or stored on the Website at any time and for any reason, and you are solely responsible for creating backup copies of and replacing any User Content you post or store on the Website at your sole cost and expense.

By uploading, posting or submitting User Content to the Website or to our pages or feeds on third party social media platforms (e.g., blu’s Facebook page, LinkedIn page or Twitter feed), you hereby grant blu a nonexclusive, royalty-free, worldwide, perpetual, irrevocable and fully sublicenseable right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute, perform and publicly display your User Content, in whole or in part, in any manner or media and for any purpose whatsoever at our sole discretion, including, without limitation, for publicity, promotional, advertising, trade, business, illustration, artistic and other commercial and noncommercial purposes, however, blu will only share personal information that you provide in accordance with our Privacy Policy at <https://www.blu.com/en/US/faqs/our-policies/Privacy-Policy.html>.

You acknowledge and agree that blu may disclose or use any User Content that you Transmit for purposes that include, but are not limited to: (a) enforcing these Terms; (b) complying with any laws, regulations or rules of any federal, state or local government or agency; (c) responding to claims that

any User Content violates the rights of third parties; or (d) protecting the rights or property of blu, its customers or the public.

Accuracy of Content

Although we make all reasonable efforts to ensure that the content of the Website is updated and corrected, blu makes no warranties as to its accuracy. We attempt to be as accurate as possible when posting Content. We do not warrant that product descriptions or other content is accurate, complete, reliable, current or error-free.

We implement a number of security features to help guarantee and ensure to the greatest extent possible that your information is safe. We use industry standard technologies when transferring and receiving user data exchanged between blu and third parties to ensure its security. User data may be stored on servers maintained by our third party partners and subject to their security safeguards which are periodically audited, with certifications from accreditation bodies across geographies and verticals. All financial transactions are made securely. Please see blu's Privacy Policy located at <https://www.blu.com/en/US/faqs/our-policies/Privacy-Policy.html> for additional information relating to the privacy and security of information collected hereunder.

Indemnification and Disclaimers

You shall indemnify, hold harmless, and, at blu's option, defend blu from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("Losses") incurred by blu resulting from any third-party claim, suit, action or proceeding relating to or arising from your use of the Website, any User Content that you Transmit to or through the Website, any violation of these Terms by you, or any other act or omission by you, including your violation of any rights of another, arising from your use of the Website or any of its features. You further agree that blu shall have control of the defense or settlement of any third party claims, unless blu exercises its option to require you to defend blu. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and blu.

YOUR USE OF THIS WEBSITE IS AT YOUR SOLE RISK. THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE RESERVE THE RIGHT TO RESTRICT OR TERMINATE YOUR ACCESS TO THE WEBSITE OR ANY FEATURE OR PART THEREOF AT ANY TIME. BLU EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANYKIND, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES THAT MATERIAL ON THE WEBSITE IS NONINFRINGING; THAT ACCESS TO THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE; THAT THE WEBSITE WILL BE SECURE; OR THAT INFORMATION ON THE WEBSITE WILL BE COMPLETE, ACCURATE OR TIMELY. IF YOU DOWNLOAD ANY MATERIAL FROM THIS WEBSITE, YOU DO SO AT YOUR OWN DISCRETION AND RISK. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL BLU BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF REVENUE, INCOME OR PROFITS, LOSS OF USE OR DATA, LOSS OR DIMINUTION IN

VALUE OF ASSETS OR SECURITIES, OR DAMAGES FOR BUSINESS INTERRUPTION) ARISING OUT OF OR IN ANY WAY RELATED TO THE ACCESS TO OR USE OF THE SITE (INCLUDING, BUT NOT LIMITED TO, USER CONTENT, AND LINKS TO THIRD PARTY SITES), OR THE ORDER, RECEIPT OR USE OF ANY PRODUCT OR SERVICE, OR OTHERWISE RELATED TO THESE TERMS (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES CAUSED BY OR RESULTING FROM RELIANCE ON ANY INFORMATION OBTAINED FROM BLU, OR FROM EVENTS BEYOND BLU'S REASONABLE CONTROL, SUCH AS SITE INTERRUPTIONS, DELETIONS OF FILES OR EMAILS, ERRORS OR OMISSIONS, DEFECTS, BUGS, VIRUSES, TROJAN HORSES, DELAYS IN OPERATION OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT RESULTING FROM ACTS OF GOD, COMMUNICATIONS FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO BLU RECORDS, PROGRAMS OR SYSTEMS), REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, SIMPLE NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED) OR ANY OTHER LEGAL OR EQUITABLE THEORY (EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE).

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE MAXIMUM AGGREGATE LIABILITY OF BLU ARISING OUT OF OR IN ANY WAY RELATED TO THE SITE EXCEED THE AMOUNT PAID TO BLU FOR ANY PRODUCTS OR SERVICES IN THE NINETY (90) DAYS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IN THE EVENT YOUR REMEDIES HEREUNDER FAIL OF THEIR ESSENTIAL PURPOSE, AND THE FOREGOING SHALL CONSTITUTE BLU'S SOLE LIABILITY AND OBLIGATION IN RESPECT HEREOF, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, SIMPLE NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), OR ANY OTHER LEGAL OR EQUITABLE THEORY.

IF YOU ARE A CALIFORNIA RESIDENT, YOU HEREBY WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE 1542, WHICH STATES "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Arbitration and Class Action Waiver

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH BLU AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

YOU AND BLU AGREE THAT ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING IN ANY WAY TO THESE TERMS, OR THE SERVICES SHALL BE FINALLY DECIDED BY BINDING ARBITRATION UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION GOVERNING CONSUMER DISPUTES. Arbitration uses a single, neutral arbitrator to decide a dispute (instead of a judge or jury); arbitration allows for more limited discovery than in a court case; and the arbitration process and result is subject to very limited review by courts. In an arbitration you have the right, at your expense, to be represented by an attorney of your choosing. Arbitrators can award the same damages and relief under these Terms that a court can award under these Terms. You and blu agree that any in-person arbitral hearing would occur in the United States in the same county and state as your billing address. blu further agrees that your filing fee for an arbitration will be capped at the amount set by the American Arbitration Association. You agree that, by agreeing to these Terms, the U.S. Federal Arbitration Act governs the interpretation and enforcement of this provision, and that you and blu are each waiving the right to a trial by jury or to participate in a class action. This arbitration provision shall survive termination of these

Terms and the termination of your use of the services. REGARDLESS OF THE FORUM, YOU AND BLU AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and blu agree otherwise, the arbitrator may not join or consolidate more than one person's claims with your claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.

Fraudulent Activities

blu reserves the right at blu's discretion to deactivate, disable and remove any suspicious or fraudulent account with or without notice. By creating a blu.com account, you agree to (a) provide accurate, current and complete account information, (b) maintain and promptly update, as necessary, your account information, (c) maintain the security of your account credentials, (d) be responsible for the acts or omissions of any third party who has authority to access or use the Website on your behalf, and (e) immediately notify us if you discover or otherwise suspect any security breaches related to the Website or your account and/or password. Any changes to your registration information may be made by sending such changes to Customer Service at <https://www.blu.com/en/US/contact-us>. If you provide information that is untrue, inaccurate, not current or incomplete, we may suspend or terminate your account and refuse any and all current or future use of the Website. You are entitled to refunds, reimbursements, credits, and exchanges for any portion of your account balance only at the discretion of blu and only if a request for such a reimbursement has been made by you.

blu reserves the right to: (a) refuse any order you place with us; (b) correct any errors, inaccuracies or omissions (including but not limited to the price) with regard to the products offered; (c) change or update information in connection with any products offered; and (d) modify or cancel your order, whether or not the order has been confirmed, each at any time without notice to you (including after you have submitted your order) and without liability to you. If we modify your order, we will attempt to give you prior notice of this and provide you with the opportunity to cancel the order in its entirety. If we cancel your order, we will attempt to notify you by contacting you via the contact information you provided at the time the order was made. We reserve the right to limit, reject, modify, or cancel orders that, in our sole judgment, appear to be placed by unauthorized parties, including resellers. It is your duty to ensure the contact information you provided is up to date and accurate.

If your payment method has already been charged for an order that is later modified or cancelled, blu shall issue you a refund in the amount of the incorrect price back to your original method of payment. We apologize for any inconvenience this may cause you.

You agree not to sell, resell, distribute or make available to others, or otherwise use or exploit for any commercial purposes (including, without limitation, in contests, sweepstakes and/or giveaways) any portion of any Products or services purchased from this Website or otherwise obtained from blu without blu's prior written consent. Any person or entity that sells, resells, distributes or makes available to others, or otherwise uses or exploits any Products or services for commercial purposes without such prior written permission will void the product warranty and may be subject to civil action and/or criminal penalty, as prescribed by law.

Modification of these Terms

These Terms may be revised at any time for any reason, and blu may provide you notice of these changes by any reasonable means, including by providing notice through the Website. You can determine when we last updated the Website by referring to the “Last Updated” legend at the top of these Terms. Except to the extent that your express consent to any revised Terms is required under data protection law, by continuing to access, browse or use the Website, you confirm your acceptance of the revised Terms and all the terms incorporated herein by reference. We strongly recommend that you periodically visit this page of the Website to review these Terms. If you do not agree to the revised Terms, you may not access or use the Website.

Pricing

Except where noted otherwise, the prices displayed for blu vapor products represent the full retail price listed on the product itself. We cannot confirm the price of an item until you complete an online order form; however, we do not charge your credit card until after your order has entered the shipping process.

Quantity Restrictions

We reserve the right to limit the quantity of products that may be purchased through our Website.

Purchases by Minnesota Residents

Minnesota residents may be required by the Minnesota Department of Revenue to pay additional taxes and fees due as a result of their purchases from blu.

Purchases by California Residents

If you are a California resident, in accordance with Cal. Civ. Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112 Sacramento, CA 95834, or by telephone at (800) 952-5210 or (916) 445-1254.

Return Policy

We stand behind the quality of our product and guarantee to the original purchaser that our products shall be free from defects in material and workmanship for a period of one year from the original purchase date. This warranty applies to the products under normal use and is subject to all product usage documentation. In the event you need to exchange your blu pack, battery, or charger, simply complete our online Replacement Merchandise Authorization (RMA) form; if you don't have a blu.com account, you'll be asked to set one up. If your product needs to be returned to us, we'll send a prepaid envelope for shipping. Your replacement product typically leaves our warehouse within two (2) business days of the approval of your return. Your request must be received within one year from the original purchase date. We reserve the right to refuse any exchange request that does not meet these requirements. All sales are final. Flavor cartridges and disposable products are NOT eligible for replacement or exchange.

Cancellation of Orders

We reserve the right to refuse or cancel an order for any reason including limitations on quantities available for purchase, inaccuracies, or errors in product or pricing information.

Severability

If any provision of these Terms and Conditions shall be deemed unlawful, void or, for any reason, unenforceable, that provision shall be deemed severable from these Terms and Conditions, and shall not affect the validity and enforceability of any remaining provisions.

Miscellaneous

These Terms constitute the entire agreement between you and blu relating to your access to and use of the Website. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you without the prior written consent of blu. No waiver of any provision of these Terms will constitute a waiver of such provision in any prior, concurrent or subsequent circumstance, and blu's failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third party beneficiary rights upon any other person or entity.

How to Contact us

If you have any questions or comments about the Terms and Conditions of this Website, please [Contact Us](#) or write to us at:

blu eCigs

Attn: Customer Service

Fontem US, Inc.

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