Terms & Conditions
General - English

Nederlands: Algemene voorwaarden op aanvraag ook beschikbaar in het nederlands .
Translation in English: Terms & conditions also available in Dutch on request.

CLAUSE 1   DEFINITIONS

1.1   For the purposes of these general terms and conditions (hereinafter referred to as: "Terms and Conditions"), the following terms are attributed the following meaning:

Apps: every web and/or mobile application in the broadest sense of the word;

Client: any natural or legal persons with whom Developwizard enters into a frame agreement and/or Contract;

Content: any Materials supplied by Client to Developwizard in connection with the Services, including any trade marks (whether registered or not) as may be provided by Client in connection with the Services;

Contract: each contract to be concluded between Client and Developwizard in respect of Services or Products to be delivered by Developwizard, which also includes an offer or order signed by Client for approval;

Materials: all artwork, copy, models, photographs, films, (graphic) designs, text, copy writing, animation, sound productions, video, graphic production, html or other website code, keywords, software, data, advice, marketing strategy documents, advertising text and materials and other creative or marketing materials;

Media: printed, audio-visual, auditory, digital and mobile media, all this in the broadest sense of the word;

Products: all matters that are the subject of a Contract, including software, hardware, databases and licenses;

Services: all services that will be or that have been performed under the Contract, including advice concerning online marketing and communications, development of campaigns and strategy, development of software, data processing and implementation of campaign management solutions, creating designs, the provision of consultants, project management, designing, operating and maintaining databases and Apps, issuing licenses, maintaining developed software, website hosting, making bandwidth available, server maintenance, selecting and buying Media, this all in the broadest sense, and all materials and results produced that are intended for Client;

Developwizard and including all the others trade names.

CLAUSE 2   APPLICABILITY

2.1   These Terms and Conditions are part of the Contract whereby Client commits to providing Services or Products. If specific conditions or other provisions in a Contract are in breach of these Terms and Conditions, the terms of the Contract shall prevail.

2.2   Amendments or supplements to any provisions set out in a Contract between Client and Developwizard and/or these Terms and Conditions only apply if they are agreed upon in writing between parties in either an appendix or an addendum to the Contract.

2.3   The applicability of Client's general purchase or other conditions is hereby explicitly excluded.

CLAUSE 3   CONCLUSION OF CONTRACTS

3.1   The engagement (comprising a Service and/or Product) that Developwizard will perform for the Client will be described and set out in a Contract.

3.2   A Contract will only be considered to be concluded if and to the extent that Developwizard accepts a Contract in writing, or if Developwizard has started performing a Contract. An offer or fee quote does not bind Developwizard, is valid for thirty (30) days, and must be considered only as an invitation to conclude a Contract.

3.3   Developwizard will take due care with respect to providing numbers, measurements, descriptions and/or indications concerning Products and/or Services. Developwizard cannot, however, guarantee that no deviations will occur.

CLAUSE 4   SERVICES AND MEDIA ACTIVITIES

4.1   Developwizard is permitted to outsource part of the services to be performed to a subcontractor, but shall notify Client of any subcontracting and shall remain liable for any act or omission of any subcontractor.

4.2   If Client wishes to appoint an agency or subcontractor for the performance of any part of the Services, Developwizard shall, where necessary and reasonably practicable, co-operate with such agencies or subcontractors. Client shall ensure that any of its other agencies or subcontractors is willing to cooperate with Developwizard. Client shall be liable for any act or omission of any such agency or subcontractor.

4.3   When carrying out Services concerning Media Execution (activities to realize a commercial expression for Client in the Media), Developwizard shall act at all times as agent, not as principal, and shall place orders with the Media owners in name and account of Client.

4.4   During the term of the Contract as well as during a period of one (1) year after termination of the Contract both parties will not, directly or indirectly, employ or seek to employ in any way each other's employees in the execution of the Contract, unless with prior written approval of the other party.

4.5   If it has been agreed that the services shall be provided in stages, the Supplier shall be entitled to postpone the start of the services which are part of a stage until the Customer has approved the results of the preceding stage in writing.

4.6   In performing its services, the Supplier shall only be obliged to follow timely and responsible instructions of the Customer if this has been agreed in writing. The Supplier shall not be required to follow instructions which change or supplement the substance or scope of the agreed services; if such instructions are followed, however, the work in question shall be compensated.

CLAUSE 5   TERMS

5.1   The deadlines and/or time limits indicated by Developwizard only serve as an indication. Developwiz-

ard will use its best efforts to meet such deadlines and/or time limits. Developwizard will not be in default if it exceeds such agreed deadlines or time limits. In all circumstances, also if parties explicitly agreed upon an ultimate term in writing, Developwizard will not be in default until after Client has given written notice of default.

5.2   If there is a risk of any term being exceeded, Developwizard and Client will consult with each other as soon as possible.

5.3   The timelines indicated by Developwizard will commence at the earliest after the relevant Contract has been signed by Client and Developwizard.

5.4   Developwizard is in all circumstances entitled to perform the Contract in parts.

CLAUSE 6   OBLIGATIONS OF CLIENT

6.1   Client will provide all data, materials and/or resources requisite for the performance of a Contract on time, correctly, complete and in the format agreed upon with Developwizard. Developwizard cannot be held responsible for errors in Products or Services that can be attributed to Client's failure to provide the above on time, correctly, complete and/or in the format agreed upon. Developwizard cannot be held liable for the damages arising from mistakes in cartographic and other illustrations, databases, registration and/or errors in the conversion hereof.

6.2   Client will give Developwizard access to Client's building to the extent that is reasonably necessary in connection with the performance of Contracts.

6.3   A Contract will be performed at the location(s) stated in the Contract. If services are performed onsite at Client, Client is obliged to make working space, work stations, office supplies, required equipment and an accessible Internet connection available to your Developwizard's staff free of charge. On Client's premises, Developwizard will adhere to the rules and instructions that have been or will be provided to Developwizard by or on behalf of Client, including Client's safety rules and house rules.

6.4   Client will refrain from, and will also not permit third parties, to rearrange, disconnect, remove, repair or otherwise adapt the Products and/or Services delivered and/or installed by Developwizard. The Products and/or Services and the appurtenant provisions may not be used for purposes other than those for which Developwizard delivered them.

6.5   Client warrants that:

6.5.1   All Content:

a)   shall not be false or misleading, indecent, libelous, or unlawful;

b)   shall not infringe or violate any intellectual property rights of any third party; and

c)   shall not harm or adversely affect the operation of the website, computer network or other equipment of any third party and/or Media owner.

6.5.2   With regards to any website or App created or maintained by Client, in relation to the Services, Client shall ensure that such website or App includes a privacy policy which complies with applicable privacy and data protection legislation.

6.5.3   It is agreed that Client shall indemnify Developwizard against all claims, legal actions or proceedings resulting from (i) the use by Developwizard of any Content and/or (ii) breach by Client of its obligations or warranties under the Contract.

6.6   Client hereby acknowledges that (i) the placement of Content may be subject to a Media owner's term and hereby consents to abide by those terms in order that the Services may be delivered and (ii) Developwizard shall not act as data controller as defined in the General Data Protection Regulation in relation to any personally identifiable information transferred by Client to Developwizard.

6.7   Client shall indemnify, defend and hold harmless Developwizard, its employees and affiliates, against any loss, damage, cost or expense (including reasonable fees and expenses) which any of them may suffer or incur as a result of any breach of its obligations and warranties under the Contract. In particular, should Developwizard sustain any loss or liability, costs (including legal costs) and damages as a result of a claim by a third party with respect to the Content placed by
Developwizard that infringes such third party's rights – including its intellectual property rights or rights of privacy -, Client shall indemnify Developwizard against such loss or liability, costs (including legal costs) or damages.

6.8   Client is responsible for the choice and availability of telecommunications and data communications facilities and the equipment requisite for the use of Products and/or the performance of Services by Developwizard. Client bears all costs related to acquiring and/or maintaining network connections and telecommunications or data communications facilities.

6.9   Client will at all times treat the access or identification codes to a telecommunications or data communications facility provided by Developwizard with strict confidence. Client bears the risk of loss or damage of information, files and/or other data made available to Client by means of telecommunications or data communications facilities.

6.10   The risk of loss or damage of Products that are the subject of a Contract will be transferred to Client the moment Client or a person engaged by Client takes actual possession of them.

6.11   Without the Supplier's prior written permission, the Customer shall not be entitled to disclose to third parties the Supplier's working methods, methods and techniques and/or to disclose to a third party or otherwise disclose the substance of the Supplier's advice or reports.

CLAUSE 7   OBLIGATIONS OF Developwizard.

7.1   Developwizard will put forth its best efforts in providing services, where appropriate, in accordance with the written agreements and procedures agreed upon with Client. All of Developwizard's services will be performed based on an obligation to perform to the best of its ability, unless and insofar as Developwizard

has expressly promised a result, and the details of this result have been sufficiently described. Any agreements concerning a service level will at all times be expressly agreed upon in writing.

7.2   If services will be performed in phases, Developwizard is entitled to defer the Services to be performed in a particular phase until Client has approved the results of the previous phase in writing.

7.3   With respect to the Products to be delivered by Developwizard, Developwizard guarantees Client that a Product will satisfy the agreements reached between Developwizard and Client.

7.4   If Developwizard delivers products originating from a third party to Client, Developwizard can never be held liable for a longer guarantee with respect to Client than Developwizard can claim with respect to this third party.

CLAUSE 8   PRICES AND PAYMENT

8.1   All of Developwizard's prices are quoted in euro. Prices exclude VAT, out-of-pocket expenses, travel and accommodation expenses and government levies.

8.2   If the fee due for the Products or Services is rated by Developwizard in advance, this budget shall only act as an indicator for the final fee payable. If possible, Developwizard will inform Client in advance of possible additional expenses.

8.3   Client will pay invoices within 10 days of the invoice dates unless explicitly agreed otherwise in a Contract. Client will not be entitled to a discount or to withhold any amount. Client will not be entitled to deduct and/or defer any payment obligations.

8.4   If Client fails to pay the amounts owed within the term agreed upon, Client will, as of that date and without any further notice of default, owe default interest equal to the European statutory trade interest applicable at that time on the outstanding amount.

8.5   If Client continues to be in default with respect to the payment of the outstanding amounts, Developwizard can pass on the claim for collection. Client will bear all costs – including the fees of external experts in addition to the costs established by the court – related to this collection.

8.6   If payment of the Products and/or Services to Developwizard is subject to the provision of a purchase order number by Client, clause 8.3 to 8.5 above nevertheless apply if Client has failed to provide a purchase order numbers before Developwizard has started providing the Products and/or Services.

8.7   All Products and the results of Services delivered to Client will remain the property of Developwizard until Client has fully paid Developwizard all amounts due in connection with such Products or Services or any other Products or Services.

8.8   In the absence of an expressly agreed invoicing schedule, all amounts relating to services provided by the Supplier shall be owed in arrears per calendar month.

8.9   Unless otherwise agreed, the Supplier shall provide insight into the work performed, time spent and expenses incurred for the Customer.

CLAUSE 9   Developwizard's LIABILITY

9.1   Developwizard's overall liability with respect to attributable failure to perform a Contract or otherwise, is limited to compensation of the direct financial loss arising from that failure up to the amount paid by the liability insurance of Developwizard with a maximum per incident or series of related incidents of the lowest of (i) the amount invoiced by Developwizard and paid by Client during maximum twelve preceding months for the relevant performance or (ii) EUR 100,000.-

9.2   Direct financial loss is limited to the costs that Client reasonably incurred to remedy or cure Developwizard's default in order to meet Developwizard's performance under the Contract(s), the reasonable costs incurred to prevent or limit such damages and the reasonable costs incurred to determine the cause and extent of the default.

9.3   Developwizard is not liable for any indirect damages, such as consequential damage, lost turnover, lost profit, lost savings, damages caused by business stagnation, damages resulting from agreements reached with Client's customers, reduced goodwill, reputation damage, loss or corruption of data and costs incurred to restore data that was either wholly or partially lost.

9.4   Developwizard's liability or potential liability will lapse as soon as the complaint period referred to in clause 10.1, above, has lapsed and Client has not filed a complaint within this period.

9.5   The liability restrictions stated in this clause do not apply if Client's damages are the consequence of willful misconduct or intentional recklessness by Developwizard.

CLAUSE 10   FORCE MAJEURE

10.1   If, as a consequence of force majeure, Client or Developwizard is unable to comply with an obligation, the relevant party's performance obligation will be suspended for the duration of the force majeure, unless it concerns a payment obligation. Force majeure is also understood to include a non-attributable default of suppliers.

10.2   If the force majeure situation has persisted or will persist for more than thirty (30) days, both Client and Developwizard will be entitled to dissolve the relevant Contract that cannot be fulfilled by notifying the other party of this in writing. In that situation, performances that have been delivered will be invoiced pro-rata. For the remainder, Client and Developwizard will owe each other nothing.

10.3   In the event of force majeure, neither party will be entitled to claim damages from the other in that respect.

CLAUSE 11   INTELLECTUAL PROPERTY RIGHTS

11.1   Client and its licensors (as the case may be) shall exclusively own and retain all intellectual property rights in and to any Content. Client hereby grants to Developwizard a non-exclusive, royalty- free license to use the Content to the extent necessary to allow Developwizard to perform the Services, which shall include the right to sub-license the same to Media owners and subcontractors in connection with the performance of any part of the Services.

11.2   Developwizard or its licensors will continue to hold the intellectual property rights to all Products or Services that Developwizard makes available pursuant to the Contract. With respect to software and other qualifying Products and Services, Developwizard hereby grants Client – subject to the condition precedent that Client pays all amounts due under the Contract – a non-exclusive and non- transferable user right, unless explicitly stated otherwise in the Contract.

11.3   Client shall not:

a)   display or use the developed or commissioned Materials in any manner, except as specifically autho-rized in the Contract;

b)   copy, reproduce, modify, reverse engineer, decompile, disassemble, attempt to derive the source code or make derivative works of any developed or commissioned Materials to any third party;

c)   rent, lease, sell, sub-license, assign or otherwise transfer any developed or commissioned Materials to any third party;

d)   modify or remove any proprietary notices or legends placed on or within the developed or commis-sioned Materials; or

e)   display, modify or use commissioned Materials in any matter which is not permitted by the original creator or licensor of such materials or as may be communicated to Client by Developwizard.

11.4   The developed and / or commissioned Materials by Developwizard remain the property of Developwiz-ard. The Materials provided by Client to Developwizard remain the property of the Client.

11.5   Any rights not expressly granted in this license are reserved by Developwizard.

11.6   Insofar as Developwizard supplies third party software and/or database licenses to Client, the licensing conditions, guarantees, and obligations imposed by such third parties will apply to the agreement between Client and Developwizard as well.

11.7   Insofar as Developwizard maintains software and/or databases for Client – irrespective of whether they are run on Developwizard's equipment – Client will remain responsible for the use thereof. Client accepts that the use of software – and databases on its own Site – and whether or not on
Developwizard's equipment – is or can be subject to conditions, especially in terms of the license fees owed by Client.

CLAUSE 12   CONFIDENTIALITY

12.1   If and insofar Developwizard takes cognizance of confidential information of Client under a Contract, Developwizard will only use such information in relation to performing under the Contract, and Developwizard will limit the access to such information to the persons who must take cognizance of that information for such purpose. Developwizard guarantees that by signing an employment contract and/or a confidentiality agreement, these persons are obliged to keep this confidential information confidential.

12.2   Confidential information does not include information that was available to the public the moment it was taken cognizance of, that became available later, or that the recipient received from a third party with respect to which no confidentiality agreement was imposed.

12.3   The provisions set out in this clause 13 will remain in effect after termination of the Contracts between parties.

12.4   Developwizard may make mention of the existence of a relationship with Client in publications and/or advertising, in new business cases and on its website.

CLAUSE 13   PRIVACY

13.1   Developwizard satisfies the obligations imposed on it pursuant to the law concerning the processing of personal data. Developwizard will ensure that suitable technical and organizational measures are taken to safeguard personal data against loss or any form of unlawful processing.

13.2   Client guarantees that all statutory regulations concerning the processing of personal data, including regulations imposed by or pursuant to the General Data Protection Regulation, will be strictly adhered to, that all prescribed notifications have been carried out and that all requisite permissions concerning the processing of personal data have been obtained. Client will provide Developwizard with all relevant information requested in writing without delay.

13.3   Client indemnifies Developwizard for all third-party claims that might be brought against Developwizard in connection with a violation of the General Data Protection Regulation and/or other legislation regarding the processing of personal data that is not attributable to Developwizard.

CLAUSE 14   TERM AND TERMINATION

14.1   An agreement between parties will be concluded for the term stated in the Contract(s).

14.2   Each party is entitled to dissolve the Contract(s) if the other party fails to perform an obligation under the Contract(s) after a proper notice of default has been given, in which respect a reasonable period of a maximum of thirty (30) days has been set to cure the default provided that such default is attributable to the other party.

14.3   Without prejudice to Clause 14.2, one party can, without giving notice of default and without being li-

able for any damages, immediately and without requiring a court order dissolve the Contract(s) with the other party by notifying that party of same by registered mail, if:

a)   the other party has applied for a suspension of payment or has filed for bankruptcy or is put into bankruptcy or proposes an out-of court composition, or if an attachment is placed on any part of its equity;

b)   the other party discontinues its activities, ceases to pursue its object pursuant to the articles of association, decides to wind up the company, or otherwise loses its legal personality.

14.4   Amounts that Developwizard invoiced prior to the dissolution in connection with the performance of the Contract(s), will remain payable and will become immediately payable at the moment the Contract(s) are dissolved.

14.5   Provisions which, based on their nature, are intended to survive the termination of the Contract(s) will remain in full force and effect after the termination.

CLAUSE 15   MISCELLANEOUS

15.1   The failure or delay of Developwizard to exercise a right or remedy provided by these Terms and Conditions or the Contract(s) does not constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.2   The Contract, including these Terms and Conditions, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the agreement.

15.3   If a court or any other competent authority finds that any provision (or part of any provision) of these Terms and Conditions is invalid, illegal or unenforceable, that provision or part- provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Terms and Conditions shall not be affected.

15.4   Client shall not without the prior written consent of Developwizard assign (including by operation of law) or otherwise dispose of the Contract(s) in whole or part or subcontract any duties or obligations under the Contract(s) to any third party. Developwizard may assign the Contract(s)in part or in full, in the event of an acquisition of Developwizard's business to which Contract(s) relates, to the purchaser of such business.

CLAUSE 16   APPLICABLE LAW, COMPETENT COURT

16.1   These Terms and Conditions and Contracts are subject to German law.

16.2   The applicability of the Vienna Sales Convention 1980 (CISG) is excluded.

16.3   Any disputes arising from or related to the Contract(s) will exclusively be referred to the competent court in Dresden.