

LeisureKing BV's General Terms and Conditions

1. Applicability of these General Terms and Conditions

1. These General Terms and Conditions are applicable to all offers and agreements between LeisureKing BV, with its registered place of business in Apeldoorn, Chamber of Commerce number 54389585, as the supplier of goods and / or Services ('LeisureKing'), and its business counter party (parties) that purchases (purchase) goods and / or services from LeisureKing ('the Client').
2. The applicability of the Client's terms and conditions (of purchase) is expressly rejected. Possible deviations from these General Terms and Conditions will only be valid if agreed expressly and in writing.

2. Establishment of the Agreement

1. Any offer ('Quotation') issued by LeisureKing will be obligation free. The Agreement between LeisureKing and the Client is established as soon as LeisureKing has received written confirmation of acceptance of the Quotation ('the Order') from the Client. Acceptance will have taken place on LeisureKing's part if the order confirmation has been forwarded to the Client, or if LeisureKing has proceeded to execute the Order. Acceptance of the Order on LeisureKing's part applies as acceptance in the sense of Article 6:217 section 1 of the Dutch Civil Code.
2. If the Client has not issued an Order, but proceeds to use Services offered by LeisureKing in a Quotation or otherwise (with LeisureKing's approval), the Client will be deemed to have issued an Order in accordance with the content of the Quotation, or in accordance with LeisureKing's offer, and it will apply that LeisureKing has accepted the Order.
3. The Client guarantees the accuracy and completeness of the information issued to LeisureKing by or on behalf of it; the information on which the Quotation or order confirmation is based.

3. Content and term of the Agreement

1. LeisureKing provides Services consisting of (amongst other things) the development of software, websites, (source) documents and / or hardware ('the Works'), the making available of user rights, the offering of software at a distance (software as a service), mediation for the establishment of agreements between the Client and third parties, and the provision of support.
2. The Agreement and the current price list will determine which Services LeisureKing is obliged to carry out for the Client, as well as the corresponding amounts to be charged.
3. An Agreement between LeisureKing and the Client will apply for the duration of the work. If it involves a continuing performance agreement, the term that was agreed upon between the Parties will apply, and if such term has not been agreed upon, the term of one year will apply by default. A continuing performance agreement will be tacitly renewed, each time for the same period that was initially agreed upon, unless one of the Parties terminates the Agreement in writing, with due consideration for a two-month notice period.

4. Execution of the Services

1. The Client is obliged to do all that may be reasonably necessary or required (or to have this done) in order to make correct execution of the agreed Services possible on LeisureKing's part. In particular, the Client will ensure that LeisureKing receives all the information that may be necessary for execution of the Services, on time.
2. The Client is responsible for the availability of all hardware and software that may be needed in

order to use the Services, and for keeping such hardware and software up-to-date, as well as to ensure that properly functioning (Internet) connections are available. Use of outdated operating systems, browsers, plugins, scripts, or other software and / or hardware, by the Client and / or third parties, may cause the Services to not function (or to function incorrectly), and will be at the risk and expense of the Client.

3. The Client will grant LeisureKing access to all locations and will make all information available that may be required by LeisureKing in order for the Services to be supplied to the Client.
4. LeisureKing is entitled, but never obliged, to investigate the accuracy, completeness or correlation of the (source) materials, demands and / or specifications made available to it. If shortcomings are discovered, LeisureKing will be entitled to suspend the Services until the Client has addressed the shortcomings.
5. LeisureKing is entitled to have the Services carried out by third parties, entirely or in part.
6. LeisureKing is entitled to suspend the Services if the Client fails to observe one or more obligations towards LeisureKing or if LeisureKing has reasonable grounds to assume that the Client is in breach of the Agreement or of these General Terms and Conditions.
7. LeisureKing will make every effort to respond to requests from the Client as soon as possible.
8. LeisureKing may use open source licenses and / or third party licenses for its Services. The Client shall conform to the content of these licensing conditions, towards LeisureKing and towards the Licensor(s), and undertakes to act in accordance with these conditions. The Client indemnifies LeisureKing against claims from third parties, with respect to any use on the Client's part, where the Client is in breach of the open source licenses and / or third party licenses.
9. Upon termination of a Service, LeisureKing will be entitled to delete any stored data or to make such data inaccessible, and to remove all of the Client's accounts. LeisureKing is not obliged to give the Client a copy of this data.

5. Use of the Services

1. The Client's right to use the Services is strictly personal. The Client is not allowed to give third parties access by way of the login credentials (username and password) issued by LeisureKing. The Client must, at all times, prevent third parties from gaining access to this information.
2. The Client is liable for all obligations and loss or damage resulting from actions carried out with the use of the login credentials issued to the Client, unless the Client can indicate that
 - a) the loss or damage is a direct consequence of a shortcoming attributable to LeisureKing; and / or
 - b) the loss or damage is a result of a security breach at the Client, on condition that the Client also indicates that i) it is not to blame, in any way, for the breach, ii) it informed LeisureKing of the breach, immediately, in writing and by telephone, at the moment that the breach was discovered, and iii) the breach could not reasonably have been discovered at an earlier stage.
3. The Client may use the Services solely in accordance with the purpose of the Agreement and within the limits agreed upon therein. If the Agreement provides for the use of Services or Works in the Client's own web environment, the Client will not be permitted to allow these Services or Works to be used outside of the agreed web environment (or to allow others to use these Services or Works) by way of embedding, Iframe positioning, or otherwise.
4. The Client is not allowed to use the Services for actions that violate Dutch laws and regulations and / or other applicable laws and regulations. This includes – but is not limited to – using the Service to store and / or distribute information that is defamatory, slanderous or racist and / or information that violates copyrights and / or other intellectual property rights, as well as to distribute viruses or other harmful programs.

5. LeisureKing will be entitled to take all measures that may reasonably be deemed necessary, to avert danger or to prevent loss or damage, when the Client uses the Services incorrectly, or when hindrance, loss or damage, or another danger is posed in terms of the functioning of the computer systems and / or network of LeisureKing and / or of third parties. LeisureKing is also entitled to suspend one or more Services, amongst other things, or to terminate the Agreement entirely or in part.
6. At the first written request to this end, from LeisureKing, the Client will remove data and / or information that violates any provision of the Agreement and / or the General Terms and Conditions, from LeisureKing's systems, and failure to do so will entitle LeisureKing to remove the data and / or information, as it chooses, and / or to restrict access to such data and / or information. LeisureKing is entitled to take measures with regard to an action or omission of the Client or an action or omission carried out at the Client's risk. LeisureKing is also entitled, in the event of an infringement or impending infringement of the provisions, to deny the Client access to its systems, without prior notification.
7. LeisureKing will, at all times, be entitled to refuse, suspend, and / or terminate Services, entirely or in part, if, based on reasonable grounds, it is of the opinion that execution of the Services will have a negative impact on LeisureKing's reputation or good name and / or will adversely affect its clients, or if such execution will disproportionately harm LeisureKing's interests and / or those of its clients.

6. The development of Works

1. The Client is obliged, upon delivery, to inspect the Works delivered by LeisureKing. If the Client uncovers deficiencies in the Works delivered by LeisureKing, the Client will give LeisureKing a reasonable term in which to remedy the deficiency, in which case the term will not be shorter than fourteen days.
2. After delivery, LeisureKing will not be liable for defects to the Works delivered by it, unless the defect could not have been reasonably detected by the Client during the careful initial inspection. In any event, liability for defects will lapse within one year after termination of the Agreement.
3. The Client may terminate (give notice of termination for) an Agreement for the development and / or supply of Works, unless the Agreement constitutes a continuing performance agreement. The Client will, in such case, be obliged to reimburse LeisureKing for all the costs (and expenses) as well as the hours spent in that regard, at the applicable hourly rate, on condition that the reimbursement does not exceed the total agreed price. The Client will have to reimburse LeisureKing in full for any additional costs and / or additional work. In the event of interim termination, the Client is obliged to return and / or destroy all Works supplied by LeisureKing, in the Client's possession (in consultation with LeisureKing). In that case, the Client will not be entitled to use the Works, unless LeisureKing has given its express permission for such use.
4. LeisureKing is entitled to remove all the Works developed by it, upon termination of the Agreement. If the Client wants to be able to use certain Works after termination of the Agreement, LeisureKing can charge costs for the redevelopment, repair or recovery of such Works.

7. Maintenance

1. Maintenance is understood as the correction of errors and the implementation of necessary improvements in order for the Services to function properly. Maintenance does not entail the making available of improved versions of the Works, unless agreed expressly, in writing. Improved versions of the Works will be made available at LeisureKing's discretion. LeisureKing may require that the Client enter into an Agreement with LeisureKing, to be stipulated at a later stage, for use of a new version of the Works.

2. Three months after a new version of a Work has been made available by LeisureKing, LeisureKing will no longer be obliged to repair errors in previous versions and / or to provide support and / or maintenance for such outdated versions.
3. LeisureKing does not provide any guarantee that the new version will have the same functionalities as the previous version. LeisureKing is not obliged to maintain, change or add specific characteristics and / or functionalities in connection with the Works, at the Client's request.
4. LeisureKing may request and require that the Client adjust its system (devices, software, etc.), if deemed necessary for proper functioning of the Services.
5. The Client is not entitled to change the Works without prior written approval from LeisureKing. LeisureKing may link conditions to its approval. In the event of changes that were implemented without LeisureKing's approval, LeisureKing may proceed to terminate the Agreement and / or Services, or may request additional remuneration to that end.
6. If a fixed maintenance fee is set out in the Agreement, such maintenance fee will not include replacements for consumables and / or parts, nor will it include repairs for malfunctions caused by third-party repair attempts and / or adjustments at the Client's request. A fixed fee will be owed for maintenance, irrespective of whether or not the Client has taken the Works into use or is using the options to have maintenance carried out.

8. Mediation by LeisureKing

1. If the Agreement provides for mediation, on LeisureKing's part, in the establishment of agreements between the Client and its clients, the Client will grant LeisureKing permission to use, reproduce and / or disclose the information made available by the Client (including data, text, visual- and audio material). The information made available by the Client will, in any event, include all information that may be needed in order to use the Services. LeisureKing will use the information made available by the Client, for the purpose of offers on LeisureKing's own websites, and on websites of parties affiliated with LeisureKing and / or on third party websites. The Client will have to inform LeisureKing in writing, if the Client revokes its permission for use of the information, entirely or in part. In that case, LeisureKing will be entitled to cease its Services to the Client, without prejudice to LeisureKing's entitlement to claim payment of the agreed remuneration from the Client.
2. If the Agreement provides for the performance of marketing activities on LeisureKing's part, the Client will be obliged to contribute, at LeisureKing's request, by making promotion articles and / or services, samples, etc. available (free of charge), amongst other things.
3. Unless expressly agreed otherwise, in writing, LeisureKing will never become party to an agreement between the Client and its corporate or private clients. LeisureKing will not be referred to as an agent or representative of the Client, not even when an agreement is established with a client by means of LeisureKing's mediation and / or with use of any Service provided by LeisureKing. The Client agrees that it will not, in any way, give the public and / or its clients the impression that LeisureKing is party to any such agreement.
4. The Client indemnifies LeisureKing against any claims from the Client's clients and / or from third parties, related to the services and / or goods to be provided by the Client. These claims will, in any event, include but not be limited to claims for compliance and compensation for damages on account of (product) liability. The Client will, at its expense, provide LeisureKing full cooperation and will allow LeisureKing perusal of its administration so that LeisureKing can defend itself against third party claims.

9. Changes to the Services

1. Activities that result in a change to a Service, whether at the Client's request, or as a result of any other circumstance not attributable to LeisureKing, will be considered additional work.
2. LeisureKing will be entitled to charge the Client for the resulting additional costs, if LeisureKing must perform more work or other work when executing a Service, compared to what LeisureKing was reasonably able to foresee when the Quotation was issued and / or the Agreement was concluded, or must work under conditions that are more difficult than what was known when the Agreement was concluded. LeisureKing will inform the Client of the intended conditions and extra costs. If the Client is not prepared to pay for the additional work or additional costs, the Client will be entitled to terminate (give notice of termination for) the Agreement for that part of the work not yet executed, without prejudice to LeisureKing's entitlement to claim payment for the work or Services already provided, including possible (additional) work.

10. Periods

1. The (completion / delivery) dates indicated by LeisureKing or agreed upon between the Parties will always apply as target dates and will only be indicative. LeisureKing will make every reasonable effort to take the (delivery) periods and / or (completion) dates into account. If any period threatens to be exceeded, LeisureKing and the Client will consult in order to discuss the consequences of such delay for further planning.
2. In all cases, also in the event that the Parties have agreed to a final (delivery) period or (completion) date, LeisureKing will only be in default on account of the period being exceeded, once it has received a written default notice from the Client, in which the Client gives LeisureKing a reasonable period of time (to be stipulated at a later stage) in which to deliver and / or complete. The default notice must describe the shortcoming as specifically and with as much detail as possible.
3. LeisureKing will be entitled to suspend commencement of the work in a specific phase until the Client has approved the results of the previous phase, in writing.
4. LeisureKing is not bound by a (completion) date or (delivery) period if the Parties have agreed to a change in the content and scope of the Agreement (additional work, altered specifications, etc.), or if a change was agreed to regarding the manner in which the Agreement will be executed, or on account of failure on the Client's part to observe its obligations - stemming from the Agreement - or to observe them on time or in full. The fact that (the request for) additional work might surface during execution of the Agreement, will never give the Client grounds for termination or dissolution of the Agreement.

11. Intellectual property rights

1. All intellectual property rights for the Works developed or made available to the Client pursuant to the Agreement, will belong solely to LeisureKing, its licensors or its suppliers. The Client will only receive the user rights that were assigned to it in writing. A user right assigned to a Client, will not be exclusive, nor will it be eligible for transfer or pledge, and cannot or may not be reassigned by way of sublicensing, unless expressly agreed otherwise in writing.
2. The Client guarantees that it has all the required licenses and approvals in order to make devices, software, (source) files and / or other materials and information available to LeisureKing for the purpose of execution of the Services on LeisureKing's part. The Client indemnifies LeisureKing against claims from third parties in this respect.
3. The Client is not entitled to implement changes to the Works made available by LeisureKing, without prior written permission from LeisureKing.
4. The Client is not allowed to remove or alter any indication of copyrights, brands, trademarks or

other intellectual property rights associated with the Works made available by LeisureKing, including indications relating to the confidential nature and secrecy thereof.

5. LeisureKing is allowed to take technical measures in order to protect the Works made available. If LeisureKing has used technical protection to secure the Works, the Client will not be allowed to remove or circumvent this protection.
6. Every instance of reproduction and / or public disclosure of the Works, on the Client's part, outside of that provided for in the Agreement, in these General Terms and Conditions, and / or in the licensing conditions, is prohibited. In the event that the Client violates this provision, the Client will owe LeisureKing an immediately claimable fine amounting to €25,000, per violation, without prejudice to LeisureKing's entitlement to claim compensation for the loss or damage resulting from an infringement of its intellectual property rights and / or to take other legal action in order to claim compliance with this provision.

12. Prices and payment

1. Unless stated otherwise, all prices are in euro and are exclusive of sales tax (VAT) and any other levies imposed by the authorities.
2. LeisureKing is entitled to adjust the applicable prices and rates, by way of a two-month written notice. If the Client does not wish to agree to the price- and rate adjustments announced by LeisureKing, the Client will be entitled, within seven working days after the intended notification, to terminate the Agreement by way of written notification, before or on the date on which the price- or rate adjustment would take effect or the date by which the Agreement should be terminated as indicated by LeisureKing.
3. LeisureKing will charge the Client for the amounts owed, by way of an electronic invoice. The invoices are due within fourteen (14) days of the invoice date. Once the due date of the invoice has lapsed, the Client will automatically be in default. LeisureKing will be entitled to suspend its Services, entirely or in part, in the event of failure to pay on time.
4. If the Client is of the opinion that (part of) an invoice is incorrect, the Client must inform LeisureKing thereof within the payment term. This will not cause suspension of the payment obligation.
5. In the event of failure to pay on time, the Client will be liable for full compensation of the judicial and extrajudicial (collection) costs, including the lawyer fees paid by LeisureKing, in addition to payment of the outstanding amount and the interest owed on it. The Parties have set the compensation for judicial and extrajudicial costs at the rate of 15% of the outstanding amount, with a minimum of €50.
6. If the Client comprises numerous natural persons and / or legal entities, each person or entity will be held jointly and severally liable for observance of the payment obligations.

13. Retention of title

1. All items delivered by LeisureKing, to the Client, will remain LeisureKing's property, until such time as the Client has met all payment obligations towards LeisureKing, in full, pursuant to and / or in connection with any agreement, including interest charges and collections costs.
2. In all cases, rights are granted or where appropriate transferred to the Client on condition that the Client has paid the corresponding agreed fees on time and in full.

14. Confidentiality

1. The Parties will treat information received from each other prior to, during or after execution of the

Agreement as confidential if such information is marked as confidential or when the recipient knows or should reasonably be able to understand that such information should be treated as confidential. The Parties will also impose this obligation on their employees and on any third parties enlisted by them in connection with execution of the Agreement.

2. LeisureKing may use the knowledge gained by it during execution of the Services, on condition that such use will not result in disclosure of the Client's confidential information to third parties.
3. After termination of this Agreement, regardless of the reason, the obligations stemming from this article will remain in full force, for the term during which the Party that provided the information can reasonably claim the confidential nature thereof.

15. Liability

1. LeisureKing's liability based on a shortcoming in the fulfilment of the obligations, is limited to (no more than) the amount charged for provision of the Services. If the Agreement constitutes a continuing performance agreement with a term that exceeds one year, the total amount of the fees stipulated for the Services will be equal to the fees for a full year.
2. LeisureKing will never be liable for indirect loss or damage and / or consequential loss or damage, including loss or damage due to lost sales or profit and loss of data.
3. Liability on LeisureKing's part, based on a shortcoming in the fulfilment, will only arise if the Client has informed LeisureKing in a timely fashion upon establishing a shortcoming in the Services, in writing, and if the Client has given LeisureKing a reasonable period of time in which to remedy the shortcoming, and such deadline has lapsed while LeisureKing has failed to remedy the shortcoming (and such failure is attributable to LeisureKing). The default notice must describe the shortcoming as specifically and with as much detail as possible, so that LeisureKing is given the opportunity to respond adequately.
4. The Client's claims based on a shortcoming in the fulfilment of the Agreement will lapse after a period of twenty-four months after such claim originated.
5. Circumstances not attributable to LeisureKing (force majeure) will in any event include outages or disruptions of the internet, telecommunications infrastructure, power failures, civil unrest, mobilisation, war, transport obstructions, strikes, lockouts, business interruptions, supply delays, fire, flooding, import and export restrictions, and when LeisureKing's own suppliers do not enable LeisureKing to deliver, regardless of the reasons, as well as all circumstances in which LeisureKing cannot reasonably be expected to fulfil the Agreement. Execution of the Agreement will be suspended for the period in which force majeure applies. If force majeure has persisted for longer than 60 days, both Parties will be entitled to terminate the Agreement.
6. The limitation of liability referred to in section 1 and 2 does not apply if the loss or damage is the result of wilful misconduct and / or deliberate recklessness on the part of LeisureKing's management.

16. Privacy

1. Without prior permission from the Client, LeisureKing will not use personal information of the Client and / or of the Client's clients for marketing campaigns.
2. LeisureKing will process personal information of the Client and / or of the Client's clients in order to be able to provide the Services. LeisureKing will treat this personal information with confidentiality and secrecy, and will ensure that the employees and / or subcontractors who work with this information for execution of the Services will maintain the same confidentiality and secrecy.

3. LeisureKing may use anonymous information and / or information that cannot be traced to an individual natural person, for the purpose of improving the services provided to Clients, amongst other things.
4. The Client acknowledges that the information obligations towards the involved parties - its clients - will be borne exclusively by the Client. The Client guarantees that it has complied with its information obligations, that it has informed the involved parties of the purposes of the processing, and that it has informed them of their right to reject, inspect, correct and / or request removal. The Client guarantees that the use and processing of its clients' personal information is not unlawful and / or will not infringe on the rights of third parties, and indemnifies LeisureKing against possible claims from regulatory bodies or third parties in this respect.

17. Amendments to the Agreement and to the General Terms and Conditions

1. After acceptance, the Agreement can only be amended with mutual consent, except insofar as the Agreement or General Terms and Conditions stipulate otherwise.
2. The Client understands that an amendment to the Agreement and / or the occurrence of additional work can influence the agreed or expected time of completion for all arrangements set out in the Agreement.
3. LeisureKing is entitled to amend or add to these General Terms and Conditions unilaterally. LeisureKing will have to inform the Client of such amendments or additions, at least two months prior to the amendments or additions taking effect. If the Client does not want to accept the amendments or additions, the Client will have to object in writing, within fourteen days following receipt of the notification. LeisureKing will then indicate whether it will enforce the amendments or additions or whether it will revoke such amendments or additions for the Client. If LeisureKing is not willing to revoke, the Client will be entitled to terminate the Agreement as per the date on which the amendments or additions are scheduled to take effect.
4. LeisureKing may amend these General Terms and Conditions, at any moment, if necessary due to revised legal requirements. The Client will not be able to object to such amendments.

18. Final provisions

1. This Agreement is governed by Dutch law. Unless stipulated otherwise by mandatory rules and regulations, all disputes arising from this Agreement shall be submitted to the Dutch court with jurisdiction in LeisureKing's district.
2. If one or more of the provisions of this Agreement and / or of these General Terms and Conditions are declared void, the remaining provisions will remain in full force. The Parties or the court will then establish (a) new provision(s) to replace the provision(s) declared null and void, which will approximate the intent of the original Agreement and these General Terms and Conditions, as much as legally possible.
3. When these General Terms and Conditions state 'in writing', it also implies communication by fax or email, on condition that the sender's identity and the integrity of the content are assured.
4. The version of communication received or stored by LeisureKing will apply as an authentic copy, barring proof to the contrary to be furnished by the Client.
5. A Party will only be allowed to transfer the rights and / or obligations stemming from this Agreement, to a third party, if the other Party has provided prior written approval to that end. On the contrary, LeisureKing will always be entitled to transfer its rights and / or obligations stemming from this Agreement, to a parent- or subsidiary company.

