

GENERAL TERMS AND CONDITIONS

Article 1: Definitions

The following capitalised terms shall have the following meanings in this Agreement:

The Client: the business with which Moshi Toshi enters the Agreement.

Browser: a programme for browsing the World Wide Web or facilities in a similar form for making information available or accessible. *Service:* the provision and operation of the Software on the Server.

Documentation: the instruction manuals for the use of the Software.

Form: an electronic document that contains a further specification of the Service and/or with which an order for the Service can be placed or with which the Service can be ordered or booked.

Defect: a demonstrable deviation in the Service from the properties agreed for the Service in the specifications.

Intellectual Property Rights: all rights of intellectual property and associated rights, such as copyright, rights to trademarks, patents, models, trade names, databases and related rights, as well as rights to know-how and performances that can be treated in the same way as those capable of being protected by intellectual property rights.

Moshi Toshi: the Party to the Agreement that renders the Service.

Agreement: the General Terms and Conditions, as well as the Form and/or any other stipulations or statements that have been lawfully declared applicable to the legal relationship between the Parties in accordance with the General Terms and Conditions.

Party: each party to the Agreement. *Software:* the Moshi Toshi software application. *Server:* a computer administered by or on behalf of Moshi Toshi running web-server software that can be accessed by the internet.

System: the hardware and Software in its entirety.

Website: any virtual location on the World Wide Web or facilities in a similar form by which information is made available or accessible, by means of which Products and/or Services or information concerning them is made available.

General Terms and Conditions: these general terms and conditions.

Article 2: Applicability

2.1 These General Terms and Conditions apply to all Agreements and all acts and juridical acts between Moshi Toshi and the Client, even if those acts or juridical acts do not lead to or are not connected with an Agreement.

2.2 The General Terms and Conditions also apply to all use of the Website by the Client.

2.3 Unless expressly agreed otherwise, the applicability of other general terms and conditions is excluded.

2.4 Moshi Toshi is entitled to amend these General Terms and Conditions at any time. Moshi Toshi shall notify the Client in writing, electronically or through its website www.moshi-toshi.com of any amendments to the General Terms and Conditions. The amendments shall take effect one (1) month after that notice.

Article 3: Communication

3.1 All communication between Moshi Toshi and the Client can take place electronically except to the extent that these General Terms and Conditions and/or the Agreement and/or the law provide otherwise.

3.2 The version of the communication in question that is received or stored by Moshi Toshi will serve as evidence thereof, notwithstanding evidence to the contrary presented by the Client. 3.3 An electronic communication is deemed to have been received on the day of sending, unless the contrary is proved by its recipient. If the communication is not received due to delivery and/or accessibility problems connected with the Client's e-mail inbox, this will be for the Client's risk, even if the e-mail inbox is hosted by a third party.

Article 4: Conclusion of the Agreement

4.1 Statements by Moshi Toshi regarding the provision of the Service shall be deemed to be an invitation to make an offer. Unless a separate written agreement is concluded, the Agreement shall be concluded upon confirmation by Moshi Toshi of the Client's order. Confirmation may take place electronically (for instance through the Moshi Toshi website, by e-mail, SMS text message or similar technologies) or, if so agreed, in written form (by fax or letter).

4.2 All periods and delivery periods referred to by Moshi Toshi shall be specified to the best of its knowledge, based on the information that it receives from the Client. The mere fact of a breach of a period or delivery period shall not place Moshi Toshi in default.

Article 5: Description of the Service

5.1 Moshi Toshi shall render the Service to the Client for the duration of the Agreement. Within no more than three (3) working days after the Agreement takes effect, Moshi Toshi shall provide the Client with the URL of the Server, as well as a user name and password with which the Service can be configured and managed by the Client.

5.2 Moshi Toshi does not guarantee that the Client will be able to make use of the Service at all times and that the Service will be rendered in a full, complete and timely manner. Disruptions to the Service may occur in part, but not exclusively, due to disruptions to the internet or telephone connection.

5.3 Unless expressly agreed otherwise, the Client must carry out the installation and implementation of the Service with the aid of the documentation provided for this purpose by Moshi Toshi. Moshi Toshi shall not be liable for any losses incurred by the Client resulting from the incorrect installation or implementation of the Service by the Client.

5.4 Moshi Toshi is entitled to make changes to the Software from time to time in order to improve the functionality and to rectify errors. Moshi Toshi will endeavour to resolve any errors in the Software but cannot guarantee that all errors will be rectified. Because the Service is rendered to a number of clients, it is not possible to refrain from making certain adjustments in respect of the Client alone. The Documentation for the current version of the Software will always be available on the Server in electronic form.

5.5 Article 5.4 does not apply to Software that Moshi Toshi obtains from third parties, notwithstanding the provision contained in the first sentence of article 5.4. In relation to the use and maintenance of the Software, Moshi Toshi shall never be called on to do anything more or anything deviating from that which is applicable in the relationship between Moshi Toshi and its relevant supplier.

Article 6: General Terms and Conditions for Use of the Service

6.1 The Client shall determine which information will be stored and/or exchanged using the Service. Moshi Toshi has no

knowledge of that information. The Client is also responsible for ensuring that such information is lawful and does not infringe the rights of third parties. Moshi Toshi accepts no liability whatsoever for the information stored and/or exchanged using the Service. The Client indemnifies Moshi Toshi for any claims by third parties based on an allegation that the information stored and/or exchanged by the Client using the Service is unlawful and/or has been unlawfully distributed.

6.2 If Moshi Toshi is aware or realises that the information stored and/or exchanged by the Client using the Service is unlawful, then Moshi Toshi shall take prompt action to delete that information or to render access to it impossible. Moshi Toshi shall never be liable for losses arising from such actions and no restitution of sums paid shall be possible.

6.3 The Client must ensure that the user names and passwords provided to the Client by Moshi Toshi remain confidential. Moshi Toshi is not liable for the misuse of user names and passwords and is entitled to assume that a user who utilises the Client's user name and password is in fact the Client. As soon as the Client becomes aware or has reason to suspect that the user names and passwords have fallen into the hands of parties not entitled to use them, the Client must notify Moshi Toshi, notwithstanding the Client's own responsibility to adopt effective measures of its own immediately.

6.4 The right to use the Software and Documentation as granted in these General Terms and Conditions may only be exercised for the purpose of the Client's own commercial or professional activities and never in such a way that it leads or may lead to any form of commercial or non-commercial exploitation of the Service or any part thereof by the Client or a third party.

6.5 The Client is not permitted to surrender, transfer or make available to any third party in any way whatsoever the Service or copies or rights of use in respect thereof in any form at all or to encumber them with any restricted right or contribute them to any company or joint venture.

6.6 The Client is not permitted to sell, rent out, sublicense or dispose of the Service or data-carriers on which it is stored or to grant restricted rights in respect thereof or to make them available to a third party in any way or for any purpose whatsoever, to allow a third party access to the Service whether remotely or otherwise or to allow the Service to be hosted by a third party, even if the third party uses the Service solely for the benefit of the Client. The Client shall not alter the Service other than in connection with rectifying errors. The Client shall not use the Service in connection with processing data for third parties.

6.7 The source code for the Software shall not be made available to the Client, even if the Client is willing to pay financial remuneration in return for the provision thereof. The Client acknowledges that the source code is of a confidential nature and contains commercial secrets belonging to Moshi Toshi.

Article 7: Special Terms and Conditions for Use of the Service

The Client is fully responsible and liable for all information that it provides to Moshi Toshi or distributes, publishes or otherwise disseminates through a Moshi Toshi Service. The Client guarantees that the content of the information supplied by it and/or the use of the Service shall not:

- a) be in conflict with the applicable law and regulations;
- b) be in conflict with the Agreement and the General Terms and Conditions;
- c) be in conflict with reasonable guidelines and instructions given by Moshi Toshi;
- d) cause damage or obstruction to the systems of Moshi Toshi and/or of other clients or internet users;
- e) be unlawful in any other sense; or
- f) damage the interests and good reputation of Moshi Toshi.

Article 8: Co-operation by the Client

8.1 The Client shall always provide Moshi Toshi in a timely manner with all data and information that is useful and necessary with a view to the proper performance of the Agreement and with full co-operation.

8.2 The Client is responsible for the use and application within its organisation of its hardware, the Software, the Documentation and the Service, as well as for control and security procedures and proper system management.

8.3 If the information that is necessary for the performance of the Agreement is not made available to Moshi Toshi or is not made available on time or in accordance with the terms agreed or if the Client fails to comply with its obligations in any other way, Moshi Toshi will be entitled to suspend performance of the Agreement, without prejudice to its other rights. Moshi Toshi will be entitled to charge the resulting costs at its usual rates and/or to dissolve the Agreement fully or partially.

Article 9: Maintenance

9.1 Moshi Toshi reserves the right to shut down the Service temporarily for the purpose of maintenance, adjustments or improvements to the computer systems of Moshi Toshi. To this end Moshi Toshi may, among other things, check files (including incoming and outgoing e-mails) for signs of unsafe or illegal actions, computer attacks and viruses.

9.2 Moshi Toshi shall ensure that such shutdowns occur outside office hours to the greatest possible extent and that the Client receives timely advance notice of scheduled shutdowns. Moshi Toshi shall never be obliged to pay the Client compensation as a result of these shutdowns of the Service.

Article 10: Support

10.1 Moshi Toshi shall provide online support to the Client in using the Service. The support shall be provided through a support forum on the Moshi Toshi website. The Client can use the forum to submit questions. Moshi Toshi shall endeavour to answer the questions properly and within a reasonable period of time. However Moshi Toshi cannot guarantee the accuracy and/or completeness of the answers.

10.2 Unless agreed otherwise in a separate agreement, Moshi Toshi shall not perform any support work at the Client's business location.

10.3 The Client can involve Moshi Toshi's partners for support in relation to designs, text and campaign management.

Article 11: Prices and Payment

11.1 The Client shall pay the price specified on the order form for the Services ordered by the Client. Payment shall be made in the manner specified by the Client on the Form, notwithstanding the provision contained in article 11.5.

11.2 Prices are exclusive of VAT and other government levies. The prices stated on the website and in advertisements can be altered without prior notice.

11.3 Where payment is on the basis of an invoice and Moshi Toshi offers this possibility, the Client shall make payment within fourteen (14) days after receipt of the invoice, unless Moshi Toshi specifies a different period. An invoice that is sent electronically will be deemed to have been received on the day of sending. Invoices sent by post will be deemed to have been received, in the Benelux, within two (2) days after the postmark and, in other countries, within five (5) days after the postmark.

11.4 In the event of late payment Moshi Toshi shall be entitled: (1) without notice of default or notification being required, to charge the statutory interest on the full amount owed from the

date on which payment should have taken place until the date on which Moshi Toshi receives the amount owed; and (2) following notice of default, to assign the claim to a third party for collection. The Client shall reimburse all costs that Moshi Toshi and this third party are required to incur in order to collect the amount owed, including, but not limited to, the costs of legal assistance, litigation costs and extrajudicial costs, the latter being a minimum of fifteen (15) per cent of the sum owed except insofar as this would be unacceptable according to standards of reasonableness and fairness (in view of the amount outstanding). Notice of default can be sent electronically if the Client has opted for electronic payment or if payment has been made following receipt of an invoice that was sent electronically.

11.5 Moshi Toshi reserves the right to require a different payment method than that specified by the Client, without being obliged to state reasons.

11.6 All payments by the Client to Moshi Toshi will be deducted from the Client's longest outstanding invoices, irrespective of any indication made by the Client in relation to the invoices.

Article 12: Intellectual Property Rights

12.1 The Intellectual Property Rights to all Software that Moshi Toshi makes available in connection with the Agreement shall remain with Moshi Toshi or with the third party from which Moshi Toshi acquires the right to make this Software (or a part thereof) available to the Client. Moshi Toshi hereby grants the Client no more than a right of use that is non-exclusive and non-transferable, unless expressly stipulated or provided to the contrary in the Agreement.

12.2 If Moshi Toshi considers it clearly established that Software made available by Moshi Toshi under the Agreement infringes any rights of a third party, Moshi Toshi shall be entitled, at its own discretion, (1) to ensure that the Client can continue to use the Software that has been made available, or (2) to suspend the rendering of the Service in question while charging reasonable remuneration for its use and refunding any excess, or (3) making available Software that Moshi Toshi reasonably considers to be equivalent. Any further liability and obligations to render any further performance or pay compensation are hereby excluded.

12.3 The Client guarantees that, if and insofar as it provides materials or data to Moshi Toshi in connection with the Agreement, the Client is entitled to do so and that these materials and data do not infringe any rights of third parties. The Client shall indemnify Moshi Toshi against any action based

on an allegation that such provision, use or processing infringes any rights of third parties.

12.4 The Client must not delete or amend any copyright notices, trademarks or other indications concerning the party entitled to the Intellectual Property Rights in the Software that is provided. The same applies to statements that certain information is of a confidential nature.

12.5 The Client shall never be entitled to register or apply for registration of any right concerning an object that is identical to or may be confused with any object that is subject to any Intellectual Property Right belonging to Moshi Toshi or its licensors.

12.6 The Client is not permitted to use or request a domain name that is identical to or may be confused with any object that is subject to any Intellectual Property Right belonging to Moshi Toshi or its licensors.

12.7 Except insofar as is allowed by a legal provision from which no derogation is permitted or by the Agreement, the Client must not copy, decompile or apply reverse engineering to any Software that is made available. Neither is it permissible to delete or circumvent security features or technical restrictions/restrictions on the use of the Software. The Client is permitted to make a back-up copy of the Software that is identical to the original, provided that it includes the same trademarks, trade names and copyright notices as the original.

12.8 Moshi Toshi indemnifies the Client against claims by third parties that Services rendered under the Agreement infringe Intellectual Property Rights or are unlawful in other ways, provided that the Client informs Moshi Toshi without delay of the existence and substance of such claims and that the Client gives Moshi Toshi full freedom to conduct negotiations on the matter and/or to reach a settlement and/or mount a defence in any litigation. If and insofar as is necessary, the Client hereby grants Moshi Toshi an irrevocable power of attorney to defend such claims in and out of court and to reach a settlement. The Client commits itself to provide all the information and co-operation to Moshi Toshi that is reasonably necessary for this purpose. Moshi Toshi's obligation to indemnify shall lapse if and insofar as the alleged infringement has been caused by changes to the rendered Services made by the Client or by a third party on behalf of the Client, or by the use of the Software in combination with Software not provided by Moshi Toshi or as a result of use in any other way than that for which the rendered Services are designed or intended.

Article 13: Privacy

13.1 The use of the Service entails the processing of personal data. Moshi Toshi functions as the processor. In this capacity Moshi Toshi will comply with all of its legal

obligations. By entering into this Agreement the Client instructs Moshi Toshi to process the personal data in connection with the Service. Any other processing will be performed by Moshi Toshi only at the instructions of the Client or if there is a legal obligation to do so.

13.2 The Client guarantees that it has lawfully obtained and processed the personal data that it uses for the Service. The Client indemnifies Moshi Toshi against claims by third parties for losses alleged to have been caused by unlawful processing or by any act that is irreconcilable with the applicable Dutch privacy legislation and that is attributable to the Client.

13.3 All employees who act under the authority of Moshi Toshi and have access to the personal data shall respect the confidentiality of the personal data that comes to their knowledge, unless they are required to communicate by law.

13.4 Moshi Toshi shall adopt appropriate technical and organisational measures to secure the personal data against loss or any form of unlawful processing. These measures shall be appropriate, taking account of the current state of technology and the associated costs and shall partly be intended to prevent any unnecessary collection and further processing of personal data.

Article 14: Guarantees

Any defects that are reported to Moshi Toshi by the Client within a period of three (3) months after commencement of the rendering of the Service shall, at the discretion of Moshi Toshi, either be remedied by Moshi Toshi free of charge or be addressed by means of replacement, unless the occurrence of these Defects can be attributed to the Client and/or the Agreement contains arrangements on this matter. In relation to Software, any imperfections that do not place essential limits on ordinary use shall not fall under this guarantee. In relation to Software derived from third parties, Moshi Toshi shall never be called on to do anything more or anything deviating from that which is applicable in the relationship between Moshi Toshi and its relevant suppliers.

Article 15: Liability

15.1 Moshi Toshi shall never be liable for any indirect losses to the Client or third parties, including but not limited to consequential loss, loss of turnover and profit, data losses and non-material losses.

15.2 The liability of Moshi Toshi to the Client for direct losses of any nature whatsoever is limited per event (where a series of interconnected events shall be considered as a single event) to the payments (excluding VAT) actually made by the Client to Moshi Toshi in the current calendar year.

15.3 Direct losses are understood to mean only the costs that the Client has reasonably been required to incur to remedy or bring to an end Moshi Toshi's failure so that Moshi Toshi's performance complies with the Agreement, as well as reasonable costs to prevent or restrict such losses and reasonable costs to determine the cause and extent thereof.

15.3 With due observance of the provision contained in article 12.8, the Client indemnifies Moshi Toshi for all claims by third parties of any nature whatsoever for the reimbursement of losses, costs or interest connected with this Agreement and/or Service.

15.4 The previous paragraphs of this article shall not apply if and insofar as the loss in question is caused deliberately or by gross negligence on the part of Moshi Toshi or its employees.

Article 16: Force Majeure

16.1 A Party shall not be liable to fulfil one or more obligations if prevented from doing so by force majeure. Force majeure includes but is not limited to any situation in which the party in question is not in fact able to exercise control or decisive control, the foregoing being subject to the exception of obligations to make monetary payments. Force majeure on the side of Moshi Toshi shall include but not be limited to non-attributable failures by Moshi Toshi's suppliers and disruptions to internet connections, hardware, telecommunications and electricity networks. 16.2 Once it is clear that the force majeure circumstances shall persist for longer than three (3) months, the other party shall be entitled to dissolve this Agreement in writing, without being liable to pay damages.

Article 17: Confidentiality

17.1 If and insofar as the confidential information of one Party comes to the knowledge of the other Party during the performance of this Agreement, the Party that receives the information shall use it only for the performance of this Agreement and restrict access to the information to persons who are required to be made aware of it for that purpose. The Parties guarantee that these persons will be obliged by means of an employment and/or confidentiality agreement to respect the secrecy of this confidential information. 17.2 Confidential information shall not include information that was already in the public domain at the time of awareness or that came into

the public domain thereafter or that the receiving Party also obtained from a third party without a duty of confidentiality having been imposed in respect thereof or the third party having been obliged to respect its confidentiality.

Article 18: Duration and Termination

18.1 The Agreement shall be entered into for a period of one year and can only be terminated in the manner specified in these General Terms and Conditions.

18.2 If the Agreement is entered into for a definite period of time, it shall be extended for successive periods of one (1) year unless a Party terminates it in writing with effect from the end of its duration and with due observance of a notice period of three (3) months. No reasons need to be stated upon termination of the agreement.

18.3 Notwithstanding article 18.2, a party can, without notice of default being required and without being obliged pay any compensation as a result, dissolve the Agreement with the other Party with immediate effect by means of a registered letter and without judicial intervention if:

- a) the other Party applies for a moratorium on payments or bankruptcy or is declared bankrupt or offers a composition to avoid bankruptcy or any of its assets are attached;
- b) the other Party ceases its activities, ceases to pursue the objects laid down in its articles of association, resolves to go into liquidation or loses its corporate personality in any other way;

18.4 Notwithstanding articles 18.2 and 18.3, Moshi Toshi is entitled, without notice of default being required and without being obliged pay any compensation as a result, to dissolve the Agreement with the Client with immediate effect by means of a registered letter and without judicial intervention if:

- Article 12 – Intellectual Property Rights
- Article 7 – Special Terms and Conditions for Use of the Service;
- Article 17 – Confidentiality.

18.5 In the event of a dissolution within the meaning of paragraph 3 or 4 of this article, all claims that the Party that dissolves the agreement has against the other Party will immediately become payable in full. The other Party will be obliged to adopt the necessary measures in order to give the Party dissolving the agreement the opportunity to exercise its rights.

18.6 Immediately after the Agreement is terminated the Client shall return all copies of the Software and Documentation provided to the Client by Moshi Toshi in connection with the Agreement. Moshi Toshi shall also return any materials owned by the Client after the Agreement is terminated.

18.7 Provisions that by their nature are intended to extend beyond the dissolution or termination of the Agreement shall remain in full force after termination or dissolution. These include, but are not limited to, obligations in relation to:

- payment of outstanding amounts; confidentiality;
- Intellectual Property Rights; - liability.

These provisions shall remain in force as long as Moshi Toshi can reasonably invoke any claim to their continuation.

Article 19: Suspension

Moshi Toshi shall be entitled to suspend the performance of the Agreement, either fully or partially, if the Client fails to comply with its obligations under these General Terms and Conditions or the Agreement or if Moshi Toshi has reasonable grounds to suspect that the Client will not be able to meet its obligations or to meet them in full, notwithstanding any other rights accruing to Moshi Toshi.

Article 20: Amendments and Additions

Amendments and additions to any provision of the Agreement and/or the General Terms and Conditions shall be valid only if agreed in writing and/or electronically. This provision is an agreement as to the burden of proof. If any change and/or addition within the meaning of this paragraph is agreed upon, it will apply only to the Agreement in question.

Article 21: Miscellaneous Provisions, Applicable Law and Competent Court

21.1 These General Terms and Conditions and all Agreements shall be governed by Dutch law. The provisions of the Dutch Civil Code regarding general terms and conditions shall not apply in relationships with Clients from outside the Netherlands.

21.2 No third parties can become party to any Agreement between Moshi Toshi and the Client by way of a third-party clause in these General Terms and Conditions or in the Agreement.

21.3 The provisions of these General Terms and Conditions and the Agreement shall together determine the legal relationship between the parties and will replace all earlier agreed terms or statements by Moshi Toshi in relation to the subject of the Agreement. This provision is an agreement as to the burden of proof.

21.4 Except insofar as standards of reasonableness and fairness would render this unacceptable, the words used shall primarily determine how the Agreement is to be interpreted. If, even when read in the context of the entire document, the words cannot lead to a reasonable interpretation in the given circumstances, then the reasonable intentions (commercial and otherwise) of the parties shall be the standard by which interpretation takes place. No evidence in rebuttal is permissible against wording that is not prima facie ambiguous. Neither is evidence permitted that concerns other sources of interpretation than the reasonable commercial intentions of the parties. The provision in this paragraph is an agreement as to the burden of proof.

21.5 Moshi Toshi is entitled at its own discretion to involve third parties in the performance of the Agreement. 21.6 Moshi Toshi is entitled to assign rights and obligations under the Agreement to (i) a group company (ii) pursuant to sale or delivery of all or almost all the assets of Moshi Toshi or (iii) pursuant to a financing, merger or reorganisation of Moshi Toshi.

21.7 If any provision of these General Terms and Conditions or the Agreement that Moshi Toshi reasonably believes to be essential transpires to be null and void or otherwise unenforceable, Moshi Toshi will be entitled to annul the rest of the Agreement, except insofar as it would be unacceptable in the given circumstances according to standards of reasonableness and fairness.

21.8 Insofar as is not provided otherwise by rules of national or international law from which no derogation is permitted, all disputes between the Parties shall, at the discretion of the summoning or defending party, be submitted to the competent court in the court district of that Party's place of domicile, or another court that is competent based on the rules of national or international law.

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