

## **PitmasterX V.O.F. – GENERAL TERMS AND CONDITIONS**

### **Article 1. – Definitions**

In these general terms and conditions, the following terms, including those conjugated in plural or singular, are used in the following sense, insofar as the nature or purport of the clauses does not indicate otherwise.

- **Agreement:** the agreement between PitmasterX and the Purchaser.
- **Intellectual Property Rights:** all intellectual property rights, including copyrights (*auteursrechten*), trademark rights (*merkenrechten*), patent rights (*octrooirechten*) and trade name rights (*handelsnaamrechten*), in respect of any work, including Videos, documents, designs and/or other whether or not electronically recorded information.
- **Parties:** PitmasterX and the Purchaser together, and each being a 'Party'.
- **PitmasterX:** the user of this General Terms and Conditions, PitmasterX V.O.F., a general partnership (*vennootschap onder firma*) incorporated under the laws of the Netherlands, having its corporate seat in Tonden, the Netherlands and its registered office at De Voortweg 11, (6975 AA) Tonden and registered in the Trade Register of the Dutch Chamber of Commerce under number 83902112.
- **Purchaser:** the legal entity or person with whom PitmasterX enters into, or wishes to enter into, a legal relationship.
- **Terms and Conditions:** these general terms and conditions of PitmasterX.
- **Videos:** any image and/or sound-bearing material made by, or commissioned by, PitmasterX that is or was intended to be used as an advertisement.

### **Article 2. – General provisions**

**2.1** These General Terms and Conditions apply to any offer made by PitmasterX and any agreement entered into.

**2.2** Deviations from these General Terms and Conditions are only valid if expressly agreed in writing. Applicability of any of the Purchaser's conditions or other (general) terms and conditions is expressly rejected by PitmasterX.

**2.3** In the event of a conflict between the general terms and conditions of PitmasterX and the agreement, what is contained in the agreement shall prevail.

**2.4** Annulment or nullity of one or more of the provisions of these general terms and conditions shall not affect the validity of the remaining provisions. Parties then undertake to enter into mutual consultation in order to reach a replacement arrangement in respect of the affected clause. The purpose and purport of the original provision will be taken into account as far as possible.

### **Article 3. – Offer and formation of agreements**

**3.1** Any offer by PitmasterX is without obligation, even if it specifies a deadline for acceptance. PitmasterX is never obliged to accept an order.

**3.2** The Purchaser or any other cannot derive any rights from an offer of PitmasterX that contains an obvious mistake or error.

**3.3** If no agreement is formed based on an offer by PitmasterX, PitmasterX has the right to charge the Purchaser for all costs incurred in making the offer. Payment of the offer fees due shall be made within two weeks from the date of the relevant invoice.

**3.4** An offer from PitmasterX does not automatically apply to any subsequent agreements. In so far as no changes have been made, these general terms and conditions do apply to later agreements without PitmasterX being obliged to make these terms and conditions available to the Purchaser.

**3.5** Every agreement is concluded when the offer of one party is accepted by the other party. If the acceptance deviates from the offer, the agreement is not concluded in accordance with this deviating acceptance, unless both parties have nevertheless reached an agreement in this respect. Notwithstanding the provisions of the foregoing of this paragraph, the agreement is in any case established if PitmasterX has commenced the performance of the work with the consent of the

Purchaser. PitmasterX always reserves the right to enter into the agreement only based on the signature by the Purchaser of any quotation prepared by PitmasterX for that purpose.

**3.6** If the Purchaser enters into the agreement (also) on behalf of another natural or legal person, he declares by entering into the agreement that he is authorized to do so. The Purchaser is jointly and severally liable for the fulfilment of the obligations under that agreement in addition to that (legal) person.

#### **Article 4. – Price and payments**

**4.1** All amounts quoted by PitmasterX are exclusive of VAT unless explicitly stated otherwise.

**4.2** PitmasterX is not obliged to (further) execute the agreement for as long as the Purchaser is in default with the payment obligation towards PitmasterX.

**4.3** Invoices of PitmasterX must be paid - without deduction, discount or set-off - in a timely manner. The customer is not entitled to suspend any payment obligation.

**4.4** The Purchaser shall never be entitled to set off amounts due to PitmasterX against any counterclaim, for whatever reason, that the Purchaser may have against PitmasterX. This also applies if a moratorium and/or bankruptcy or a debt restructuring arrangement has been applied for or has been pronounced with respect to the Purchaser.

**4.5** If the Purchaser becomes bankrupt, applies for (temporary) suspension of payment, the Dutch Natural Persons Debt Rescheduling Act is declared applicable to him or his receivership is applied for, if any attachment is levied on the goods and/or claims of the Purchaser, goes into liquidation or is dissolved, the Purchaser is obliged to notify PitmasterX immediately and all claims of PitmasterX on the Purchaser are immediately due and payable.

**4.6** PitmasterX is entitled to send the invoices to the Purchaser by electronic means.

**4.7** If timely payment is not made, the default of the Purchaser shall commence by operation of law. From the day that the Purchaser is in default, the Purchaser shall owe interest of 2% per month on the outstanding amount, whereby part of a month shall be considered a full month.

**4.8** All reasonable costs, including judicial, extrajudicial and execution costs, incurred to obtain the amounts owed by the Purchaser, shall be borne by the Purchaser. These costs amount to a minimum of 15% of the amount due and will be at least €150.

#### **Article 5. – Confidentiality**

**5.1** During the term of the Agreement and thereafter, the Parties will keep secret all confidential information that has come to their knowledge and in no way disclose and/or make available such information to third parties and only use the confidential information for the purpose for which it was made available. Third parties include all persons that work for or on behalf of a Party who do not have a need to know such information. The following is regarded as confidential information in the sense of these Terms and Conditions:

- a. all information disclosed verbally, in writing, or directly or indirectly made available in any other way, which is indicated to be confidential and/or of which the other Party knows or should reasonably know that it is confidential;
- b. all product, marketing, customer, and/or other business intelligence which is indicated to be confidential or of which the other Party knows or should reasonably know that it is confidential, irrespective of how it was disclosed;
- c. all other documentation, data, drawings, benchmarks, tests, test data, specifications, object codes, source codes, production methods, technologies and/or other information developed by a Party which is indicated to be confidential and/or of which the other Party knows or should reasonably know that it is confidential, irrespective of how it was disclosed;
- d. each copy in whichever form of the foregoing.

**5.2** The Parties' obligations do not apply in case of confidential information if the receiving Party can show that (i) it is generally acknowledged or available within the public domain (unless it has become available due to any unauthorized disclosure by the receiving Party), (ii) was in the possession of the receiving Party before its disclosure hereunder and had not previously been obtained under an obligation of confidentiality, (iii) written consent has been given by the other party or (iv) it is required to be disclosed by law or court order.

**5.3** PitmasterX reserves the right to use the knowledge gained through the performance of the work for other purposes, insofar as no confidential information is disclosed to third parties.

#### **Article. 6 – Intellectual Property Rights**

**6.1** Unless agreed upon otherwise in writing, PitmasterX holds the Intellectual Property Rights relating to the Videos.

**6.2** PitmasterX acknowledges that the Intellectual Property Rights of the logos and trademarks that are made available by the Purchaser will remain vested in the Purchaser. PitmasterX warrants that it will not infringe any of these rights.

**6.4** The Purchaser indemnifies PitmasterX against all claims by third parties relating to a (claimed) infringement by such third parties of the Intellectual Property Rights that are made available to PitmasterX by the Purchaser (including comparable claims relating to knowledge, unfair competition and the like). At PitmasterX's first request, the Purchaser will take over the defense of any legal proceedings relating to such claims, of which existence PitmasterX will notify the Purchaser as soon as possible and for which PitmasterX will provide the Purchaser all the required powers of attorney and assistance. Furthermore, the Purchaser indemnifies PitmasterX for all damages and costs awarded against PitmasterX in such legal proceedings, including any attorney's fees.

#### **Article 7. – Annulment**

**7.1** An agreement entered into by the Purchaser with PitmasterX cannot be cancelled or revoked by Purchaser unless express written approval is granted by PitmasterX.

#### **Article 8. – Force Majeure**

**8.1** PitmasterX is not obliged to fulfil any obligation under the agreement if and as long as it is hindered to do so by a circumstance that cannot be attributed to it under the law, a legal act or generally accepted practice. Force majeure means, in addition to what is understood in law and jurisprudence, all external causes beyond the control of PitmasterX that make the (further) performance of the agreement impossible or seriously hamper it.

**8.2** If the force majeure situation makes performance of the agreement permanently impossible, the parties shall be entitled to dissolve the agreement with immediate effect.

**8.3** If PitmasterX has already partially fulfilled its obligations when the force majeure situation arises, or can only partially fulfil its obligations, it shall be entitled to separately invoice the part already fulfilled or executable part of the agreement as if it were an independent agreement.

**8.4** Without prejudice to the application of the previous paragraph, damage resulting from force majeure shall never be eligible for compensation.

#### **Article 9. – Suspension and dissolution**

**9.1** PitmasterX is authorized, after consideration of interests, to suspend the fulfilment of all its obligations or to dissolve the agreement, until all obligations of the Purchaser have been settled in full.

**9.2** If the Purchaser becomes bankrupt, applies for (temporary) suspension of payment, is declared subject to the Dutch Natural Persons Debt Rescheduling Act, or if his receivership is applied for, if the goods and/or receivables of the Purchaser are seized, goes into liquidation or is dissolved, PitmasterX has the right to dissolve the agreement with immediate effect, unless the Purchaser has already provided sufficient security for the fulfilment of the amounts due and to become due under the agreement.

**9.3** Furthermore, PitmasterX is entitled to dissolve the agreement if and insofar as circumstances arise of such a nature that fulfilment of the agreement is impossible or cannot reasonably be required of it.

**9.4** The Purchaser shall never be entitled to any form of compensation in connection with the right of suspension or termination exercised by PitmasterX based on this article, on the understanding that if the circumstances that led to the termination of the agreement should reasonably be at the risk of PitmasterX, the Purchaser shall at most be entitled to restitution or remission of the invoice amount.

**9.5** To the extent attributable to purchaser, the Purchaser shall be obliged to compensate PitmasterX for the damage suffered by PitmasterX as a result of the suspension or rescission of the agreement.

**9.6** If PitmasterX dissolves the agreement according to this article, all claims against the Purchaser shall be immediately due and payable.

#### **Article 10. – Liability, warranty and indemnity**

**10.1** PitmasterX shall make all reasonable efforts to execute the agreement to the best of his ability. He reserves the right to create the videos according to his own interpretation. PitmasterX is in no way liable for how the advertisements are displayed. Including, but not limited to, the frequency, duration and clarity of the representation of the advertisements.

**10.2** PitmasterX shall not be liable for any damages due to inaccuracy or incompleteness in the data provided by or on behalf of the Purchaser, defects in or unsuitability of materials or resources made available by or on behalf of the Purchaser in connection with the performance of the work, any other failure of the Purchaser to meet his or her obligations under the law or the agreement, any acts or omissions of third parties on which PitmasterX depends, such as its suppliers, as well as any other circumstance that cannot be attributed to PitmasterX.

**10.3** PitmasterX shall never be liable for indirect damages, including losses suffered, lost profits and damages resulting from business interruption. Without prejudice to the provisions of the rest of these general terms and conditions and in particular the provisions of the following paragraph, PitmasterX shall only be liable to the Purchaser for direct damage suffered by the Purchaser as a result of an attributable failure of PitmasterX in the performance of the agreement with a maximum amount of the invoice. An attributable shortcoming is to be understood as a shortcoming that a good and careful professional can and should avoid, all with due observance of normal attentiveness and the professional knowledge and means required for the execution of the work. Direct damage means exclusively:

- a. the reasonable costs incurred to establish the cause and extent of the damage, to the extent that the establishment relates to damage that qualifies for compensation within the meaning of these general conditions
- b. any reasonable costs incurred to make the defective performance of PitmasterX conform to the agreement, to the extent that these can be attributed to PitmasterX
- c. the reasonable costs incurred to prevent or limit the damage, insofar as the Purchaser demonstrates that these costs have led to a limitation of the direct damage within the meaning of these general terms and conditions.

**10.4** Should PitmasterX be liable for any damages, PitmasterX shall at all times be entitled to recover such damages. Accordingly, PitmasterX's liability, if any, shall be limited to remedying its errors or shortcomings, if any, free of charge. The Purchaser must give PitmasterX the opportunity to repair, failing which any liability of PitmasterX in this regard shall lapse.

**10.5** In the event PitmasterX is liable for damages that are excessive in relation to the compensation referred to in the preceding paragraph, PitmasterX's liability shall at all times be limited to no more than the price paid by the Purchaser to PitmasterX for that portion of the agreement to which PitmasterX's liability relates.

**10.6** The Purchaser shall indemnify PitmasterX against any third-party claims. If PitmasterX should be sued by third parties for that reason, the Purchaser shall be obliged to assist PitmasterX both extra-judicially and judicially and immediately do everything that can reasonably be expected of him in that case. Should the Purchaser fail to take adequate measures, PitmasterX is entitled, without notice of default, to take such measures itself. All resulting costs and damages on the part of PitmasterX and third parties are entirely for the account and risk of the Purchaser.

**10.7** The limitations of liability in these terms and conditions do not apply if the damage was caused by intent or deliberate recklessness on the part of PitmasterX.

#### **Article. 11 – Assignment and subcontracting**

**11.1** The Parties are not entitled to transfer the rights from the Agreement to a third party without the other Party's prior written consent.

**11.2** Notwithstanding the previous paragraph, PitmasterX is entitled to engage third parties to perform its obligations under the Agreement (including but not limited to a newly established to which PitmasterX transfers its activities). In such case, PitmasterX will remain responsible for the execution of the Agreement.

**Article 12. – Other**

**12.1** Each agreement and all legal relationships arising therefrom between the parties shall be governed exclusively by Dutch law.

**12.2** The parties will not appeal to the courts until after they have made every effort to settle the dispute by mutual agreement.

**12.3** All disputes relating to agreements between PitmasterX and the Purchaser, to which these terms and conditions apply, and which do not fall within the competence of the district court, shall be settled by the competent court in the district where PitmasterX has its registered office. However, PitmasterX is free to submit the dispute to the court having jurisdiction under the law, at PitmasterX's option.