



## GENERAL TERMS AND CONDITIONS GOVERNING THE DELIVERY OF SERVICES OF CAPTCHA B.V. AMSTERDAM AND ROTTERDAM.

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### 1. GENERAL

1.1 In these general terms and conditions, CAPTCHA! is referred to as 'the Supplier'. The counterparty is referred to as 'the Client'.

1.2 These general terms and conditions apply to all offers made and all agreements concluded by the Supplier, both orally and in writing, under which the Supplier delivers services and/or goods of whatever nature to the Client. Any provisions that deviate from these general terms and conditions are valid only if they have been expressly agreed upon in writing.

1.3 The Client is deemed to be familiar with these general terms and conditions, to have accepted their applicability and to have agreed to these general terms and conditions expressly and without any reservation.

1.4 The Supplier does not accept any reference to or any reliance on the general terms and conditions used, printed or written by the Client or any other terms and conditions, unless the Supplier has confirmed the applicability of such terms and conditions in writing.

1.5 Once the Client has done any business with the Supplier in accordance with these general terms and conditions, as evidenced by any letter, order confirmation, invoice or by any other way in which these terms and conditions have come to the Client's knowledge, the Client is deemed to carry out every subsequent transaction in accordance with these general terms and conditions as well.

1.6 If any provision of these general terms and conditions is void or annulled, the other provisions of these General Terms and Conditions continue to be in full force and effect and the Supplier and the Client shall enter into consultation for the purpose of agreeing on alternative provisions to replace the void or annulled provisions, taking the purpose and the essence of these latter provisions into account as much as possible.

### 2. OFFER AND ACCEPTANCE

2.1 An engagement is deemed to have been accepted by the Supplier and to have been assigned by the Client either by means of a written confirmation of the engagement to the Client, or as a result of the Supplier having started to carry out work for the engagement.

2.2 The Client may cancel an engagement free of charge only if he notifies the Supplier thereof in writing at least 48 hours before the start day of the work according to the schedule provided by the Supplier. If the Client cancels an engagement less than 48 hours but more than 24 hours before the start day of the work according to the schedule provided by the Supplier, the Client is liable to pay 50% of the fee agreed upon for the relevant engagement. If the Client cancels an engagement less than 24 hours before the start day of the work according to the schedule provided by the Supplier, the Client is liable to pay 100% of the fee agreed upon for the relevant engagement.

2.3 The Client shall report changes with respect to the engagement to the Supplier in writing and in a timely fashion. If the Client fails to do so, any incorrect execution of these changes is at the risk and expense of the Client.

2.4 Changes with respect to the engagement enter into force as a result of and with effect from the acceptance thereof by the Supplier, which acceptance may be evidenced by the carrying out of the changes desired.

2.5 Increases or decreases in costs as a result of changes with respect to the engagement are charged or credited to the Client respectively.

2.6 Changes with respect to the engagement may result in the Supplier exceeding the delivery periods initially indicated.

2.7 All offers are indicative only and without any obligation, unless otherwise stated in writing. These offers are not valid until after the Supplier has confirmed them in writing.

2.8 All agreements entered into by persons working for the Supplier are binding only after these have been confirmed in writing by the management.

2.9 The prices quoted by the Supplier may be changed, even after a written confirmation thereof, as a consequence of any change in the prices charged by its own suppliers, any change in wages and production costs and in any other factors determining prices, including changes as a result of a measure adopted by or on behalf of any government agency, without prejudice to the Client's obligation to pay for the services provided by the Supplier until then. The changed prices become effective on the date mentioned by the Supplier in the notification of the price change.

2.10 Unless the parties expressly agree otherwise, the prices quoted by the Supplier exclude VAT and other taxes, national or international, levies, shipping and transport costs and insurance costs.

2.11 If the Client does not accept any change in prices and rates, as referred to in the preceding paragraphs of this article, communicated by the Supplier, the Client is entitled to give written notice to terminate the agreement within seven business days of the date of notification thereof with effect from the date on which the relevant change in the price or rate becomes effective, as specified in the notification sent by the Supplier, or to terminate the agreement by rescinding it in writing.

### **3. PAYMENTS**

3.1 Unless the parties expressly agree otherwise, all invoices must be paid within 30 days of the invoice date.

3.2 If the Client fails to pay the amounts owed within the period agreed upon, the Client will owe statutory commercial interest, plus 2%, on the outstanding amount, without any notice of default being required. If, following a notice of default, the Client continues to be default in satisfying the claim, the claim can be passed on for collection, in which event the Client will be liable to pay not only the total amount due but also all of the judicial and extrajudicial costs, including all costs charged by external experts, in addition to the costs determined in court proceedings, in relation to the collection of this claim or any other legal action, of which the amount is determined at a minimum of 15% of the total amount.

3.3 Payments made by the Client after going into default are first used to settle the costs, then the interest due and finally, the principal sum.

### **4. RETENTION OF TITLE AND RIGHT OF RETENTION**

4.1 All goods delivered to the Client remain the property of the Supplier until the Client has paid the Supplier all amounts owed by the Client for the goods delivered or to be delivered under the agreement or any services to be provided in respect thereof, and the amounts within the meaning of Article 3, including interest and the costs of collection.

4.2 The Client is not permitted to make goods or rights owed by the Supplier available to third parties or to use them as security for any debts with respect to third parties.

4.3 The Supplier may retain possession of the products and data and the results of any editing or processing received from the Client until the Client has paid all amounts owed to the Supplier.

4.4 Without explicit written permission from the Supplier, the Client shall not suspend its payment obligation, nor shall he offset that which he owes against what he may be entitled to claim from the Supplier.

## **5. DELIVERY AND CLAIMS**

5.1 All delivery periods reported by the Supplier have been determined to the best of the Supplier's ability based on data known to the Supplier when the agreement was concluded and they will be observed to the maximum extent possible; the mere fact that any delivery period has been exceeded does not cause the Supplier to be in default. The Supplier is not required to observe delivery periods that cannot be met as a result of circumstances beyond the Supplier's control. If there is a risk of any period being exceeded, the Supplier and the Client shall consult with each other as soon as possible. The Client is never entitled to claim any compensation for direct or indirect loss or damage as a result of any delivery period being exceeded for whatever reason.

5.2 Immediately after the Client has received the services, goods and data delivered by or on behalf of the Supplier or after they have been made available to the latter, the Client is required to inspect them and to check them for any defects. Any faults or defects must be reported to the Supplier in writing immediately after they have been established and within a week of the date on which they have been received or made available.

5.3 If the Client has discovered faults or defects and has reported them to the Supplier immediately upon delivery or within the period mentioned in Paragraph 2 above, the Client and the Supplier shall enter into consultation in order to determine a reasonable period within which the Supplier may remedy the faults and/or defects.

5.4 If the Supplier fails to remedy the faults and/or defects within the period mentioned in Paragraph 3, the Client is entitled to rescind the agreement without the Supplier being liable to pay any compensation.

5.5 The Supplier is in any case not liable if the Client brings any claim after the periods mentioned in the preceding paragraphs.

5.6 The transport of goods and data that are the subject of the agreement will be at the risk of the Client, even if this transport is carried out by the Supplier. It is possible to take out insurance against damage or loss on payment of the costs thereof.

## **6. RESCISSION AND TERMINATION**

6.1 The Client is entitled to rescind the agreement only if, after a proper notice of default, which should be as detailed as possible, in which a reasonable period for remedying the failure is set, imputably fails in the performance of essential obligations under the Agreement.

6.2 If an agreement is entered into for an indefinite period, either party may terminate this agreement by a written notice, following proper consultation stating the reasons. Unless otherwise agreed in writing, a notice period of one month applies.

6.3 The Supplier is entitled to terminate the agreement(s) concluded between the parties without any judicial intervention being required, by rescission or by notice, if the Client does not or does not timely or properly meet its contractual obligations. In this case the Client is obliged to pay the costs incurred by the Supplier any amounts advanced and the fee payable until that time, without prejudice to the Supplier's right to claim damages. The damage or loss to be compensated by the Client includes any lost revenue.

6.4 The Supplier may rescind or terminate the agreement without any notice of default and without judicial intervention being required, either in whole or in part, if the Client is granted suspension of payments, provisional or otherwise, if a bankruptcy petition is filed in connection with the Client or if its business is liquidated or terminated other than for the purpose of any restructuring or merger of businesses. The Supplier will never be liable to pay any damages or other compensation as a result of such rescission or termination.

6.5 If, at the time of rescission as referred to in the first paragraph, the Supplier has performed any services under the agreement, the related payment obligations - if necessary, following invoicing - will not be subject to cancellation and will be immediately due, unless the Supplier is in default in respect of the performance of these services.

6.6 The Supplier is entitled to suspend or cease the performance of the agreement if the Client fails to fulfil the payment conditions and/or remains in default in providing the security required.

## **7. FORCE MAJEURE**

7.1 The Supplier is not obliged to meet any obligation if it is prevented from doing so as a result of force majeure.

7.2 Force majeure includes, in any case, war, threat of war, uproar, floods, strikes, lockouts, excessive absenteeism of staff or other employees of the Supplier, transport difficulties, fire, government measures, operational failure of the Supplier's business, including any failure(s) to perform on the part of the Supplier's own suppliers, irrespective of whether such failure(s) are imputable to such suppliers, and/or of any equipment of the Supplier, unless any malfunctioning of software and equipment is the result of intent or gross negligence on the part of the Supplier.

7.3 If the force majeure situation has lasted longer than 90 days, each party is entitled to rescind the agreement in writing. Any services that have already been performed pursuant to the agreement must be settled on a pro rata basis, without the parties owing each other anything else.

## **8. THE WORK**

8.1 The Supplier shall use its best efforts and perform the work with care, where appropriate in accordance with any written arrangements and procedures agreed with the Client.

8.2 All data to be processed and/or edited by the Supplier will be prepared and submitted by the Client in accordance with conditions to be set by the Supplier. Unless otherwise agreed, the Client shall take and collect the data to be processed and/or edited to and from the location where the Supplier performs the work. Transport will be at the risk and expense of the Client even if it is carried out by the Supplier.

8.3 The Client shall always ensure that all materials, data, software, procedures and instructions made available to the Supplier for the purposes of the work to be performed are correct and complete and that all data carriers furnished to the Supplier meet the specifications of the Supplier.

8.4 If it is agreed that the work is to be performed in stages, the Supplier is entitled to postpone the start of the work that is part of a stage until the Client has approved the results of the preceding stage in writing.

8.5 In performing the work, the Supplier is bound to follow any instructions of the Client that are issued in a timely and responsible fashion. The Supplier is not bound to follow instructions that change or supplement the content of the services agreed on; if, however, such instructions can be followed, in the opinion of the Supplier, the relevant work must be paid for in accordance with Articles 2 and 3.

8.6 If the agreement for the performance of any work has been concluded with a view to its execution by a specific person, the Supplier is always entitled to replace such person with one or more

other persons with the same qualifications.

8.7 At all times, the Client undertakes, at the first request of the Supplier, to deliver a copy of the product to the Supplier or, if the Client delivers an original of the product to the Supplier, to make a copy of the product and to retain this copy. The Supplier is not liable for any damage to or loss of the product (a copy or an original thereof).

## **9. COMPLAINTS AND WARRANTY**

9.1 Unless otherwise agreed, the Supplier is not responsible for verifying the accuracy and completeness of the results of the work.

9.2 The Client shall verify these results after the receipt thereof. The Client shall notify the Supplier of any imperfections as soon as possible but not later than within one week of the date of receipt of the results in writing and in a detailed manner. Complaints do not suspend the Client's payment obligation.

9.3 If imperfections in the results of the processing or editing are discovered and these imperfections are reported in a timely manner as referred to above, the Supplier shall correct these imperfections to the best of its abilities free of charge, if-

- these imperfections are the direct result of products, software, information carriers, procedures or operational acts for which the Supplier has accepted express responsibility pursuant to the agreement and
- the original data required for the relevant editing are still available.

9.4 If the imperfections are not attributable to the Supplier, the Client may request the Supplier to repeat specific work, in which case the Supplier will charge the costs thereof.

9.5 Imperfections are not attributable to the Supplier in any case if the Client has requested special data processing or editing, and if it has been communicated and confirmed in writing to the Client prior to the processing or editing that the risk of imperfections is enhanced as a result of the processing or editing requested. If any imperfections that are attributable to the Supplier cannot reasonably be remedied, the Supplier shall credit the amounts owed by the Client for the relevant work to the Client, without otherwise being liable to the Client.

## **10. LIABILITY**

The Supplier is liable for damage or loss caused to any property of the Client made available to the Supplier only to the extent that such damage or loss is the direct result of intent or gross negligence of the Supplier or its managerial staff. Except for intent and/or gross negligence of the Supplier or its managerial staff, the Supplier is never liable for any loss of profits, and/or consequential and/or indirect losses suffered by the Client. In all cases where the Supplier is liable to pay any compensation, subject to the above provisions, any liability is limited to 50% of the price the Supplier has charged for the work to be executed in accordance with the agreement. The Supplier is entitled to invoke against the Client terms and conditions limiting, excluding and determining liability that third parties may invoke against the Supplier in connection with equipment or services that have been delivered. Each claim against the Supplier, except those which have expressly been recognized by the Supplier, lapses after a period of six months after the aforementioned claim has arisen.

## **11. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

11.1 If, in relation to the execution of any engagement, the Client has made any materials, etc., available to the Supplier, the Client warrants that no intellectual property or other rights of third

parties rest on such materials, or that the Client has been granted permission by these third parties in relation to the use of these materials, etc., partly for the benefit of the Supplier. Furthermore, the Client warrants that the use of these materials etc. do not infringe any statutory or other regulations, rules and/or guidelines.

11.2 The parties may at all times make further arrangements about the assignment - in whole or in part - of the intellectual property rights to the works created by the Supplier. The Supplier is at all times entitled, even after any assignment of the rights as meant in the preceding paragraph, to use the engagement results for entries for prize festivals or for educational or editorial purposes, for museums, or for any commercial or non-commercial internal use and for any self-promotion of the Supplier.

11.3 The Client shall indemnify the Supplier for all damage or loss resulting from any failures on the part of the Client and/or breaches of warranties issued by the Client.

## **12. GOVERNING LAW AND DISPUTES**

These General Terms and Conditions are exclusively governed by Dutch law. Any disputes will be submitted to the competent court in Amsterdam.