

GENERAL TERMS AND CONDITIONS OF  
Skippify BV  
Schimminck 12  
5301 KR Zaltbommel  
hereinafter referred to as: Skippify

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#### **Article 1. Definitions**

In these general terms and conditions, the following terms have the following meanings:

**Terms and Conditions:** these terms and conditions

**Skippify:** the user of the Terms and Conditions, the private limited company Skippify B.V. with Chamber of Commerce number 60033924;

**Customer:** the (potential) contracting party of Skippify, including a client/buyer/hirer/subscriber;

**Quotation:** any offer from Skippify;

**Object:** the item made available or delivered by Skippify to the Customer (whether or not within the framework of a continuing performance agreement);

**Work(s):** Works realized or to be realized by or on behalf of Skippify for the Customer, whether or not in digital form, such as software, (audiovisual) productions, websites, presentations, designs, demos, drawings, photos, and films;

**Products:** items, Work, Objects, services, ((sub)licenses for or usage rights to) software.

**Visual Material:** all photos, videos, packshots, and atmospheric images created by a Photographer commissioned by Skippify for the purposes of the Agreement;

**Agreement:** an agreement (with schedules) concluded between Skippify and the Customer;

**Photographer:** a photographer or videographer engaged by Skippify.

#### **Article 2. General Provisions**

- These Terms and Conditions apply to all Quotations and Agreements and obligations arising therefrom with regard to the supply of Products, services and/or usage rights (licenses) by Skippify and/or its subsidiaries and/or affiliated companies.
- If specific provisions of or annexed to the Agreement conflict with these General Terms and Conditions, the provisions of or annexed to the Agreement will prevail.
- If one or more provisions of these Terms and Conditions are void or voidable, this will not affect the validity of the other provisions. If one or more provisions of these Terms and Conditions are void, the parties will be bound by rules that pursue maximum similarity in purport and that cannot be nullified.
- The applicability of any general terms and conditions of the Customer or third parties is explicitly rejected, and such terms and conditions do not apply to the Agreement.
- Headings above articles do not restrict or expand the content of an article (or part of an article). Deviations from these Terms and Conditions are valid only if and insofar explicitly agreed in writing.

#### **Article 3. Quotations**

- All Quotations issued by Skippify remain valid for 30 days and are without any obligation. An Agreement is concluded only after valid signing by the Customer or after Skippify has confirmed the Agreement, or if the performance of the Agreement has commenced.
- Notwithstanding the provisions of Book 6, article 225, paragraph 2 of the Dutch Civil Code, no Agreement will be concluded if the Customer's acceptance of a Quotation from Skippify contains (minor) deviations from that Quotation, unless Skippify accepts those (minor) deviations in writing.
- A combined Quotation may only be accepted by the Customer in its entirety.
- By entering into the Agreement, the Customer consents to the use of communication by electronic means (including email).
- Information in brochures or websites, images, drawings, presentations, demos, technical specifications, verbal Quotations, etc., is not binding on Skippify, unless explicitly confirmed otherwise by Skippify to the Customer in writing.
- The provisions of Article 16 of these terms and conditions apply to Works produced within the framework of a Quotation or the preparation thereof.

#### **Article 4. Prices and price changes**

- Prices quoted by Skippify are based on performance during normal working hours (8.30 AM to 5 PM) and exclude set-up, transport, insurance, delivery, packaging, and installation costs, VAT, disposal fees and other levies, whether or not imposed by the government, and are based on the quantities stated by Skippify.
- Skippify reserves the right to change its rates. The Customer accepts this price change if it is the direct result of a change in external factors. If the price increase amounts to more than 10% of the full amount agreed with the Customer, the Customer will be entitled to terminate the Agreement.
- Prices or other conditions (other than these Terms and Conditions) stated in a Quotation do not apply to subsequent Agreements or repeat orders.
- Skippify is entitled to increase the agreed prices for continuing performance agreements, including rent, license and usage fees, subscription fees, as well as Products directly or indirectly linked to the aforementioned prices, effective from the first day of each calendar year, in accordance with the cost of living index published by Statistics Netherlands (CBS).
- In addition to what is stated under 4.4, Skippify is entitled to increase the prices agreed with the Customer, effective from the first day of each calendar year following the commencement of the continuing performance agreement, in accordance with the increase in the rates of the relevant (music, film, photo/image and/or video) rights organizations.

#### **Article 5. Rental of Objects and provisions for all types of continuing performance agreements**

- If a rental or loan agreement or other type of continuing performance agreement has been concluded between Skippify and the Customer, this Agreement will enter into force on the day the Object is put into use, or on the first day of the service or performance to be delivered, respectively.
- The Object must be returned to Skippify in a functionally and contractually acceptable condition no later than five working days after termination of the Agreement, at the expense and risk of the Customer. In the event of a late return, the Customer will be in default without any demand or notice of default being required. In that case, Skippify will have the right to collect the Object (or have it collected) at the Customer's expense. In that case, the Customer will, without prejudice to its other obligations, owe Skippify 1/30 of the monthly (rental) price plus 50% in compensation for each day of the intervening period. If the Object is not in a functionally or contractually acceptable condition upon being returned, Skippify will have the right to charge the Customer for the repair or replacement costs.
- The Customer is only entitled to use or have the Object present at the (installation) address as stated in the Agreement.
- The Customer must use the Object competently for the purpose for which it is intended and configured and will, prior to the use of the Object, obtain all permits, approvals and consents required for such use, and will not perform, permit, or omit any acts as a result of which the possession or use of the Object would be contrary to any law, regulation or agreement with third parties.
- The Customer will provide Skippify or its authorized representative with full and unrestricted access to the object if Skippify deems this necessary.
- The Customer must ensure that ownership of the Object remains free (from attachments) and unencumbered.
- The Object is and remains the property of Skippify. The Customer bears the risk of loss of, destruction of or damage to the Object and the risk of non-payment by third parties liable for such damage. The Customer is obliged to take out fire, property and casualty insurance for the Object at its own expense on customary terms with an insurer of its choice. The Customer must then provide proof of the existence of said insurance coverage. In the event of damage to the Object, the Customer will be obliged to inform Skippify thereof in writing and immediately. Repairs to the Object may only be carried out by Skippify or a person designated by Skippify. Costs of repairs, to the extent not arising from normal use and/or maintenance, will be charged to the Customer.
- The Agreement will be automatically extended for a period of twelve months if it is not terminated by one of the parties in writing by registered letter at least three months before the end of the initial term or of the extension period.
- In the event of termination of the Agreement by Skippify, Skippify will be entitled to immediate payment by the Customer of compensation consisting of the overdue unpaid (rent) installments and the (rent) installments that the Customer would have been obliged to pay if the Agreement had been maintained, plus interest and costs. With regard to the amount of the aforementioned compensation, Skippify's records constitute conclusive proof, subject to evidence to the contrary to be provided by the Customer. In the event of termination (or any other cancellation) of the Agreement, the Customer immediately loses the right to use the Object and must return it in accordance with Article 5.2.

#### **Article 6. Services**

- Insofar as an Agreement concerns a contract for services, the applicability of Book 7, articles 404, 407 paragraph 2 and 409 of the Dutch Civil Code is excluded.
- The Customer, who is the contracting party, is not entitled to terminate the agreement.

#### **Article 7. Rights of Skippify and obligations of the Customer**

- Skippify is entitled to perform Agreements in separate phases and to deliver products by means of partial deliveries in quantities to be determined by Skippify. Skippify is authorized to invoice each partial delivery separately.
- The Customer undertakes to give employees of Skippify, or third parties engaged by Skippify, timely, unhindered, and free access to the location where the performance of the Agreement is to take place.
- Unlike the Customer, Skippify is entitled to transfer all claims, powers, and rights arising from an Agreement with the Customer, as well as all Objects (to the extent they remain Skippify's property), to third parties. This article aims to have effect under property law. The Customer acknowledges in advance the right of the aforementioned third parties to exercise all rights associated with the claims, powers, and (property) rights (against the Customer). In the event of a transfer as referred to in this article, Skippify will inform the Customer in writing in a timely manner.
- If the Customer fails to fulfill/pay its obligations in full and/or in time, or if it may reasonably be assumed that it will not fulfill its obligations under the Agreement (including but not limited to cases of bankruptcy, suspension of payments, termination of the business, destruction or loss of the Object, attachment of or recourse against the Object, and relocation of the Customer's place of business), the Customer will immediately be in default and Skippify will be entitled, without any obligation to undo the performance already delivered or pay any compensation to the Customer and without prejudice to Skippify's other rights, to terminate the Agreement in whole or in part or to suspend fulfillment of its obligations.

#### **Article 8. Delivery time and delivery**

- Agreed delivery times are merely target dates and never final deadlines. Delivery times (and therefore also Skippify's obligation to deliver) will not commence until the Customer has provided Skippify with all information and items required for the performance of the Agreement and until the invoice associated with the delivery has been paid in full by the Customer.
- Default on the part of Skippify always requires a written notice of default, in which Skippify is granted a reasonable period of at least fourteen (14) days to fulfill its obligations.
- Skippify delivers the Objects to the Customer by making them available to the Customer and/or the carrier responsible for transporting the Objects to the Customer, on Skippify's business premises and/or those of a third party designated by Skippify. The risk attached to the Objects transfers to the Customer upon delivery. The Customer is responsible for all risks associated with transportation to the desired destination.
- Shipment of Objects is always at the expense and risk of the Customer, even if delivery at Skippify's expense has been agreed, and even when the carrier demands that the clause stating that all damage caused in transit is at the expense and risk of Skippify be included on the waybills, in shipping addresses, etc.
- If delivery is not possible due to a cause attributable to the Customer, Skippify will be entitled to recover the costs of storage from the Customer.
- Work and services to be performed by Skippify for the Customer will be deemed delivered when either Skippify has notified the Client in writing that the work or services to be performed have been carried out, or the Customer has taken possession of what has been realized by Skippify as a result of said work or services.
- Skippify is entitled to engage third parties in the performance of the Agreement. Skippify is not liable for any damage suffered by the Customer as a result from the engagement of these third parties.

#### **Article 9. Technical requirements**

- All technical requirements set by the Customer with regard to the Products to be delivered must be communicated by the Customer in writing before the conclusion of the Agreement, failing which the Customer cannot attach any consequences to the absence of such requirements.
- If the products to be delivered in the Netherlands are to be used outside the Netherlands, Skippify will not be responsible for the resources needed to comply with the technical requirements, standards and/or regulations set by laws or provisions of the country where the products are to be used. This does not apply if, at the time of concluding the Agreement, notification was given of use outside the Netherlands, upon submission of all necessary data and specifications, and Skippify has accepted the Customer's use of the Products outside the Netherlands.
- The Customer is obliged to meet, at its own expense, the preconditions set by Skippify with regard to the technical environment for the proper functioning of the item(s) delivered by Skippify. Skippify accepts no liability for the non-functioning (or not fully functioning) of the Products, or the inability to deliver the Products on time, as a result of failure to meet these preconditions. Skippify has the right to pass on any (additional) costs resulting from failure to meet the preconditions to the Customer.
- If Skippify has shown or provided a model, sample or specimen, it will be shown or provided only by way of indication. The characteristics of the Products to be delivered may differ from such model, sample or specimen.
- The Customer is obliged to inform Skippify of any change in the technical environment (including Internet access) in a timely manner and in writing. Any costs ensuing from such change are payable by the Customer.
- Costs resulting from changes implemented by (tele)communication companies or Internet service providers on which Skippify and/or the Customer depend for the proper functioning of the Product will be borne by the Customer.

#### **Article 10. Warranty**

- Skippify warrants the soundness of an Object for a period of one year after delivery, provided the Customer uses it in a normal way. The warranty obligation extends only to defects that could not reasonably be observed at the time of delivery. In the event of a legitimate warranty claim, Skippify will, at its own discretion and at its own expense, repair and/or replace the defects.
- If an Object (or part of an Object) has been produced by a third party, the warranty thereon is limited to the warranty provided by that third party. Skippify is only obliged towards the Customer to comply with the warranty if and as soon as the third party has fulfilled its warranty obligations towards Skippify.
- For obligations of Skippify other than the delivery of Objects, Skippify provides a warranty only to the extent agreed with the Customer in writing, with a maximum of three months after delivery.
- Warranty is provided only if the Customer has fulfilled all its obligations under the Agreement.

#### **Article 11. Retention of title**

- All Products remain the property of Skippify until the Customer has paid all amounts owed to Skippify - including interest and costs - and these amounts have been received by Skippify in the agreed bank account.
- In all cases where Skippify wishes to exercise its ownership rights, the Customer grants unconditional and irrevocable permission to Skippify, or to a third party designated by it, to enter all locations where Skippify's property is located and to repossess those Products.
- If third parties levy an attachment on Products delivered under retention of title or intend to establish or exercise rights on those Products, the Client must notify Skippify thereof within 24 hours.
- Article 5.9 applies to the Products delivered under retention of title.

#### **Article 12. Complaints**

- The Customer is obliged to inspect the Products immediately upon delivery. Visible defects - including deviations from the Agreement - must be reported to Skippify in writing within 48 hours of delivery, failing which the Customer will not be entitled to invoke this defect.
- Other defects must be reported to Skippify in writing within 48 hours after they have been or could reasonably have been discovered and no later than 3 months after delivery, failing which the Customer will not be entitled to invoke this defect.
- Complaints regarding invoices issued by Skippify must be made known to Skippify in writing within five (5) working days of the invoice date, failing which the Customer is deemed to have approved the invoice.
- Claims of the Customer against Skippify will be time-barred after the expiry of one year following the delivery of a Product by Skippify to the Customer.

#### **Article 13. Invoicing and payment**

- 13.1. Payments must be made within the period stated on the invoice, to the account number specified on the invoice. Payment of amounts relating to continuing performance agreements must be made no later than 14 days prior to each installment. The Customer is obliged to make a prepayment or provide security on Skippify's demand, failing which Skippify is entitled to suspend performance. Any and all bank charges related to payments or partial payments will be payable by the Customer.
- 13.2. In principle, invoicing takes place via email. If the Customer wishes to receive an invoice by mail, the Customer will owe Skippify €2.50 per invoice.
- 13.3. The Customer is obliged to provide Skippify with a direct debit mandate for the collection of funds, failing which Skippify is entitled to pass on the collection costs to the Customer and suspend its obligations.
- 13.4. If the Customer has not paid the relevant invoice after the expiry of the term set by Skippify, the Customer will immediately be in default by operation of law. In that case, the Customer will be obliged to pay interest of 1% per month on the unpaid invoice amount from the day of default until the day on which payment is made in full.
- 13.5. In the event of default, liquidation, bankruptcy or suspension of payments of, or if the WSNP (Dutch Debt Restructuring (Natural Persons) Act) is declared applicable to the Customer, all of Skippify's claims against the Customer will become immediately due and payable.
- 13.6. The Customer is not permitted to set off, suspend, or otherwise withhold (payment) obligations.
- 13.7. In the event of default, the Customer will owe Skippify the extrajudicial collection costs, which amount to 10% of the invoice value with a minimum of €500, unless Skippify can demonstrate that these costs are higher, in which case the excess will be due.

#### **Article 14. Liability**

- 14.1. Except in cases of intent or gross negligence on the part of Skippify or third parties engaged by Skippify in the performance of the Agreement, Skippify will never be liable for any damage suffered by the Customer.
- 14.2. For the further limitation of liability, the following applies:
  - a. any liability of Skippify is limited to the provision of warranty in accordance with Article 10 of the Terms and Conditions, or the further warranty provisions agreed with the Customer in writing.
  - b. only the damage for which Skippify is insured is eligible for compensation and exclusively to the extent that any compensation is paid to Skippify by the insurer.
  - c. Skippify will never be obliged to compensate damage in an amount exceeding the amount charged by Skippify to the Customer pursuant to the Agreement from which the damage arises.
  - d. indirect damage will never be eligible for compensation, including trading loss, loss of income, alternative compensation, lost profits or losses suffered and personal injury, as well as damage caused by the Customer's inability, temporary or otherwise, to use the Products.
- 14.3. Skippify will never be liable to the Customer for any other use, or use by third parties, of Products supplied or made available to the Customer by Skippify.
- 14.4. All the above limitations of liability may be invoked against the Customer by employees of Skippify, or by third parties engaged by Skippify in the performance of the Agreement.

#### **Article 15. Indemnification**

- 15.1. The Customer indemnifies Skippify against all third-party claims, on whatever grounds, related to or arising from (the use of) Products.
- 15.2. The Customer is obliged, on Skippify's demand, to provide all assistance at its own expense to prevent or limit (imminent) damage resulting for Skippify from third-party claims as referred to in Article 15.1.

#### **Article 16. Use of Visual Material**

- 16.1. Skippify provides visual material for the Customer from its own image bank or by engaging a Photographer. The Visual Material remains the property of Skippify and is provided to the Customer for use on a non-exclusive basis within the framework of an Agreement and may also be used exclusively within that framework. The Customer is only permitted to use the Visual Material for its own business or an affiliated company. The Customer is never permitted to resell the Visual Material. Skippify, as the owner, is authorized to use the Visual Material (for commercial purposes), including by incorporating it into image banks and making it available to third parties as such, without the Customer being able to derive any rights therefrom.
- 16.2. The use of the Visual Material by the Customer is permitted for activities aimed at 'Below the line' communication: Use for Skippify services, on digital (menu) boards and order kiosks; Use for online and offline communication aimed at and around the own sales location such as printed menus, own order platform or webshop, the own page on a third-party order platform (e.g. Thuisbezorgd), social media posts, printing on the company car, posters and banners installed in and on the branch's premises.
- 16.3. If the Customer wishes to use the Visual Material for purposes other than the performance of the Agreement, this will only be possible with explicit written permission from Skippify. In such a case, Skippify may facilitate the conclusion of agreements between itself, the Customer, and the Photographer.
- 16.4. Skippify and the Photographer are not liable for third-party claims. The Customer indemnifies Skippify against third-party claims with regard to intellectual property rights to materials and/or data provided by the Customer and used for the performance of the Agreement.

#### **Article 17. Use of data, privacy and personal data**

- 17.1. Skippify and the Customer act in compliance with relevant privacy regulations, including the General Data Protection Regulation (GDPR), and collect and process personal data only where they have a legal basis for the processing.
- 17.2. The way Skippify handles personal data is set out in its privacy policy.
- 17.3. If Skippify and the Customer are at any time to be regarded as controller and processor within the meaning of the GDPR, they undertake to enter into a data processing agreement, bearing in mind their obligations under the GDPR.
- 17.4. The Customer guarantees Skippify that the processing of personal data is carried out lawfully and guarantees that no third-party rights are infringed. The Customer indemnifies Skippify against any (legal) claim submitted by third parties, on whatever grounds, if such claim relates to the processing of personal data by the Customer, as well as against any fines imposed on the Customer by the Dutch Data Protection Authority or other competent supervisory authorities.
- 17.5. Skippify has the right to access and process sales data of the Customer - which cannot be traced back to natural persons - including sales and transaction details, insofar as these sales data can be traced back to the software/programs supplied by Skippify. Skippify will use these sales data to improve its services.

#### **Article 18. Force majeure**

- 18.1. If Skippify is (temporarily) unable to fulfill the Agreement for a reason beyond its control, including force majeure, Skippify will not be in default and will be entitled to suspend its obligations.
- 18.2. If performance of obligations by Skippify becomes permanently impossible, Skippify will be entitled to terminate the Agreement. In such a situation, the Customer may terminate the Agreement if thirty (30) days have passed.
- 18.3. In none of the cases mentioned in this article will Skippify be obliged to compensate the Customer for damage suffered.

#### **Article 19. Intellectual property and usage rights of Products**

- 19.1. The copyright and all other intellectual property rights to all Products produced by Skippify for the Customer and/or delivered to and/or made available to the Customer are exclusively vested in Skippify.
- 19.2. By payment to Skippify for the Products, the Customer acquires the non-exclusive and non-transferable (in terms of property law) right to use the Products (by (sub)license) during the term of the Agreement in accordance with the arrangements made between the parties for this purpose. Any use other than the agreed use is prohibited.
- 19.3. The Customer guarantees Skippify that everything made available by the Customer to Skippify for the performance of the Agreement is free from third-party intellectual property rights and indemnifies Skippify against any third-party claims in this respect.
- 19.4. Skippify is at all times entitled, even after the Product has been delivered or made available to the Customer, to make changes thereto or to suspend or terminate the Customer's use thereof, insofar as the third-party intellectual property rights are being or are likely to be infringed.
- 19.5. The Customer is prohibited from making any changes or modifications to works and/or ((sub-)licenses to) software supplied or made available by Skippify, or from reproducing these works and/or ((sub-)licenses to) software, or from granting third parties a right of use to these works and/or ((sub-)licenses to) software.
- 19.6. Upon termination of the Customer's usage right, the Customer is obliged to cease using the work and/or the ((sub-)license to) software and to follow all instructions from Skippify with immediate effect to effect the return or removal of the work and/or the ((sub-)license to) software.
- 19.7. Skippify is entitled to be named on the Work and/or ((sub-)license to) software delivered or made available to the Customer, as well as to use thereof, including for promotional purposes of Skippify.

#### **Article 20. Dispute resolution**

- 20.1. All Quotations and Agreements are exclusively governed by Dutch law, to the exclusion of the Vienna Sales Convention.
- 20.2. Any and all disputes between the parties will be submitted to the competent court of the district in which Skippify has its registered office.