

# GENERAL TERMS OF SERVICE

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The General Terms of Service (“Terms”) are applicable between MACTY BVBA, a company with principal place of business at Meidoornlaan 5, 1820 Steenokkerzeel and the subscribed customer. Before you wish to engage our services, please read the following Terms carefully. This will constitute a binding agreement between you and MACTY. Please note that any violation of these Terms may result in termination of our services to you as mentioned in these Terms. MACTY reserves the right to change these Terms periodically. We will make the new Terms available to the public by posting them on this web site at least 10 days before they come into effect.

## 1. DEFINITIONS

- 1.1. “Customer”: Company that retains the services provided by MACTY for the Customer’s internal business-related purposes via a subscription to one or more of the services provided by MACTY.
- 1.2. “Customer Content”: any data, (product) information, logos, files, (product) images, text or other content that is provided by the Customer or its authorized users for use in conjunction with the Service.
- 1.3. “Intellectual Property Rights”: all rights to intellectual property worldwide, including but not limited to copyright, trademark, patent, and design rights, whether registered or unregistered, and all rights to enforce any of the rights to intellectual property.
- 1.4. “MACTY AI Software”: an AI software suite developed by MACTY related to the recognition and selection of products, e.g., clothing, furniture, shoes, etc.
- 1.5. “Service”: the services related to the MACTY AI Software.
- 1.6. “Support services”: the hosting, maintenance, support and other services provided by MACTY in conjunction with the AI Software as a service.
- 1.7. “Subscription Fee”: the fee that applies to the Customer following fulfillment of the Subscription Process payable by the Customer and that covers the provision of the Service and Support services.
- 1.8. “Subscription Process”: the online registration process whereby the Customer selects the Service and Support services provided by MACTY that the Customer wishes to subscribe to in return for the Subscription Fee applicable to the selected Service and Support services.
- 1.9. “Term”: the period during which the Customer is subscribed to the Service and the Service is provided to the Customer.
- 1.10. “User Guidance”: the document that outlines the functionality and operation of the Subscription Process and use of the website platform through which MACTY provides the Service.

## 2. PURPOSE

The purpose of these Terms is to provide the framework in which MACTY provides the Service and Support services to the Customer in return for a Subscription Fee, in the context of the Customer's internal business-related purposes whereby it is agreed that any third party that is a client of the Customer shall be and at all times remain the client of the Customer and never is, nor will ever become the client or contracting party of MACTY. The Customer acknowledges and agrees that it has received and accepted the User Guidance.

## 3. SERVICE

- 3.1. MACTY grants the Customer a limited, non-transferable, revocable permission to access and use the Service that cannot be sublicensed to any third party, unless provided otherwise in these Terms, for the Customer's internal business-related purposes during the Term at the level of service to which the Customer is subscribed and for which it has paid the applicable fees. A sublicense as provided for in these Terms must not extend beyond a third party that is either the direct client of the Customer or a third party using the Service on behalf of the Customer in accordance with article 5.1. of these Terms whereby the Customer guarantees that the third party will be bound by the same representations and warranties as provided for under these Terms.
- 3.2. In any event the Customer shall not (i) engage in or promote unlawful conduct, (ii) interfere with or circumvent any feature of the Service, including any technical limitations in the Service, (iii) reverse-engineer, decompile or disassemble the technology contained in the Service regardless of the purpose, (iv) resell or redistribute the MACTY AI Software or the Service or any part of the Service, unless MACTY has provided the Customer with the prior express written consent to do so, and (v) copy any features, functions or graphics of the Service.

## 4. SUPPORT SERVICES

- 4.1. MACTY will provide support services to the Customer during the Term at the level of support selected by the Customer following fulfillment of the Subscription Process.
- 4.2. MACTY may install software upgrades related to the Service whether for the purpose of fixing an error, bug or enhancing the functionality of the Service in which it may add or remove functions and / or features at its sole discretion. In case of removal of a functionality or feature, MACTY will undertake best efforts to notify the Customer prior to such removal.

## 5. CUSTOMER CONTENT

- 5.1. The Customer acknowledges and agrees that the Customer Content will not (i) violate these Terms, (ii) violate any applicable laws and regulations or cause MACTY to violate any applicable laws and regulations, (iii) be libelous, defamatory, obscene, abusive, derogatory, threatening or a violation of privacy, (iv) constitute an infringement, misuse or violation of any rights of third parties, including Intellectual Property Rights, (v) be illegal in any sort of way or promote illegal activity, (vi) contain any viruses or other components designed to harm or limit the functionality of the Service or (vi) be false, deceptive or inaccurate.
- 5.2. Any third party, including employees, using the Service on behalf of the Customer shall need a valid license and the Customer is responsible to ensure and guarantee that these third parties (i) will be bound by the representations and warranties as mentioned under article 5.1. of these Terms and (ii) use the Service in accordance with these Terms.
- 5.3. The Customer shall indemnify, defend and hold harmless MACTY against any claim submitted by any third party whereby MACTY is considered responsible or liable or bears a risk thereof, arising from the failure of the Customer or its authorized users to comply with the provisions under article 5.1. of these Terms, whether negligent or intentional, in which case the Customer will provide MACTY with prompt written notice of such claim and all necessary information thereto.

## 6. PRICE AND PAYMENT

- 6.1. The Customer shall pay the Subscription Fee as indicated on the invoice. Unless provided otherwise on the invoice, the Subscription Fee is to be paid within ten (10) days of the date of the invoice. Invoices will be sent by electronic delivery, unless agreed otherwise.
- 6.2. MACTY reserves the right to charge interest at 10% on all outstanding and (partially) unpaid amounts.

## 7. TERM AND TERMINATION

- 7.1. The Term shall commence when MACTY gives the Customer access to the Service and shall continue for a period during which the Customer is subscribed to the Service, one (1) month or (1) one year, contingent upon the selected subscription term following fulfillment of the Subscription Process, unless terminated earlier as provided in these Terms. Upon expiry of the initial term the Term shall automatically renew with the Customer payment of the Subscription Fee, unless terminated 15 days before the end of the month in case of a monthly renewable subscriptions and 3 months in case of yearly renewable subscriptions.

- 7.2. MACTY has the right to terminate the agreement with the Customer in the event that (i) the Customer is in material breach of these Terms, and in the event the breach is remediable, the Customer has failed to remedy that breach within 30 days of notification of that breach, or (ii) in case of non-payment of the Subscription Fee in a timely manner as provided in these Terms, after a 30 day late payment period.
- 7.3. The Customer and MACTY, separately, have the right to terminate the agreement with the Customer at any time at least 15 days before the end of each month in which the termination will be effective on the first date of the following month. MACTY shall reserve the right to immediately terminate the agreement with the Customer in case the Customer is insolvent or bankrupt or seeks protection from its creditors or if the Customer has filed for insolvency or bankruptcy or re-organization in court.
- 7.4. In the event of termination of the agreement with the Customer, the Customer shall pay the remaining balance of the outstanding Subscription Fees and, if applicable, the interest and the Customer's access to and use of the Service shall cease effective immediately.

## 8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. The MACTY AI software, the Service, visual interfaces, graphics, information, data, templates, related documentation and all other elements of the Service are proprietary products and services of MACTY and that in any usage situation, all rights related to these proprietary products and services, including all associated Intellectual Property Rights, are and shall at all times remain with MACTY. Under no event, unless necessary to properly use the Service according to these Terms, the Customer may not use, without limitation copy, reproduce, transmit, distribute, disseminate, sell, publish, assign, transfer, distribute, tamper, alter or remove our intellectual property, irrespective of the purpose. Failure to comply with this provision shall lead to the liability of the Customer with exposure to damages and possibly to termination of the agreement with MACTY.
- 8.2. In the event the Customer provides MACTY with ideas, comments, or suggestions ("feedback") regarding the MACTY AI Software and / or Service, the Intellectual Property Rights residing in that feedback or anything created as a result of that feedback is and shall be solely owned by MACTY whereby it may use or disclose that feedback for any purpose.
- 8.3. The Customer retains any Intellectual Property Rights or other proprietary rights related to the Customer Content in which it grants MACTY a perpetual, worldwide, non-exclusive, royalty-free license to use, including but not limited to access, store, transfer, reproduce, modify, or display the Customer Content in whole or in part for the purpose of providing the Service and Support services.

The Customer at all times ensures that the Customer Content is compliant with all Intellectual Property Rights whereby the Customer represents and warrants that it has (i) obtained and procured the necessary rights, releases and permissions, (ii) that the Customer Content provided to MACTY does not violate any laws and rights of any third party, including Intellectual Property Rights, rights of privacy, or rights of publicity, and that (iii) MACTY assumes no responsibility nor any legal liability for the Customer Content and that the Customer shall solely be responsible for the Customer Content and the consequences of using, disclosing and transferring it to MACTY.

## 9. LIABILITY AND WARRANTIES

- 9.1. THE SERVICE IS PROVIDED ON AN "AS IS" BASIS WHEREBY MACTY EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT; THAT THE SERVICE WILL BE ACCURATE, RELIABLE, ERROR-FREE, UNINTERRUPTED, TIMELY, SECURE AND FREE OF ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS AND THE RESULTS OBTAINED THROUGH USE OF THE SERVICE WILL MEET YOUR EXPECTED OR DESIRED OUTCOME.
- 9.2. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, MACTY SHALL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM (I) ANY USE OR INABILITY TO USE THE SERVICE OR SITE OR (II) FROM ANY UNAUTHORIZED ACCESS OR ALTERATION OF MATERIAL, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, USE, DATA, OR THE VIOLATION OF YOUR RIGHTS BY ANY THIRD PARTY, EVEN IF MACTY HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE LEGAL THEORY UPON WHICH A CLAIM IS BASED, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE.
- 9.3. NEITHER PARTY SHALL BE LIABLE FOR ANY FAILURE TO PERFORM ITS OBLIGATIONS UNDER THESE TERMS DUE TO A CAUSE OR CAUSES BEYOND ITS CONTROL, INCLUDING WITHOUT LIMITATION, ACTS OF GOD, FIRE, FLOODS, STORMS, EPIDEMIC OR QUARANTINE RESTRICTIONS, EARTHQUAKES, RIOTS OR CIVIL COMMOTION, STRIKES, WAR, AND RESTRAINTS OF GOVERNMENT FREIGHT OR OTHER EMBARGOES, WEATHER CONDITIONS OR ANY FAILURES BY SUBCONTRACTORS OR SUPPLIERS (*FORCE MAJEURE*).

## 10. CONFIDENTIAL INFORMATION

- 10.1. Either party shall not disclose the information received from the other party to any third party and shall not use it for any purpose other than in the performance of obligations under these Terms.
- 10.2. Information belonging to the other party may be disclosed without the prior authorization of the other in the event (i) the information has become public knowledge, (ii) the information has already been disclosed to the third party at the time of disclosure, or (iii) the party is bound by a legal or administrative obligation to disclose the information.
- 10.3. The provisions related to confidentiality under these Terms shall remain in full force and effect notwithstanding expiry or termination of the agreement.

## 11. GOVERNING LAW AND JURISDICTION

- 11.1. These Terms and any dispute or claim arising from it shall be governed and interpreted in accordance with the laws of Belgium.
- 11.2. The Courts of Brussels, Belgium shall be the sole and exclusive forum for any dispute or claim arising from these Terms.

## 12. MISCELLANEOUS

- 12.1. In the event a provision of these Terms is held to be invalid or unenforceable, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision most closely matching the intent of the original provision and the remainder of the Terms will continue in effect.
- 12.2. The failure of MACTY to enforce the rights granted by these Terms for whatever reason shall under no circumstances be deemed as a waiver by MACTY with regard to the subsequent enforcement of its rights.
- 12.3. These Terms set forth the entire agreement between MACTY and the Customer and supersedes all prior agreements and understandings, both oral and written, with regard to the Service.

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