

General Terms and Conditions

Date: 1st of January 2020

These Terms and Conditions apply to all offers, agreements and services provided by E-Tail Genius, established in Rotterdam (The Netherlands) and registered with the Chamber of Commerce under registration number 70603928, hereafter referred to as '**E-Tail Genius**'.

1. Definitions

1.1. **Agreement:** the License Agreement, these Terms and any attachments or documents and terms mentioned in the License Agreement.

1.2. **Business Hours:** hours between 9:00 and 17:00 on weekdays, excluding weekends, Dutch national holidays and days prior to which E-Tail Genius has announced that it is closed.

1.3. **Confidential Information:** any and all information provided by one Party to the other in any form whatsoever, either orally or in writing, electronically or in print (i) that is marked as confidential, or (ii) which the parties should reasonably understand to be regarded as confidential. Trade secrets and pricing information of E-Tail Genius as well as personal data always qualify as confidential information.

1.4. **Customer:** a natural person or legal entity that concludes an Agreement with E-Tail Genius in order to use E-Tail Genius's Service.

1.5. **Effective Date:** the date of execution of the Agreement as mentioned in the License Agreement.

1.6. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain name rights, trademark rights, brand rights, model rights, neighboring rights, patent rights and rights to know-how.

1.7. **License Agreement:** the agreement in writing between E-Tail Genius and Customer (accompanied by these Terms), containing a description and pricing of the Service.

1.8. **Offer:** an offer made by E-Tail Genius in writing or orally containing the pricing of its Service. Sending Customer a License Agreement can also be seen as an offer made by E-Tail Genius.

1.9. **Service(s):** (i) E-Tail Genius's AI platform SYMSON enabling Customer, after implementation by to optimize his pricing and demand forecasting; as well as (ii) any other services that E-Tail Genius provides to the Customer, or has an obligation to provide to the Customer under an Agreement.

1.10. **Terms:** these general terms and conditions of E-Tail Genius which are applicable to, and form an integral part of, any agreement between E-Tail Genius and its Customers.

2. Conclusion of the Agreement

2.1. Unless indicated otherwise, Offers are non-committal. E-Tail Genius can withdraw an Offer at all times. E-Tail Genius is allowed to withdraw the Offer within 48 Business Hours after E-Tail Genius has received Customer's acceptance of an Offer.

2.2. If Customer has not yet received a License Agreement from E-Tail Genius, then E-Tail Genius will send Customer a License Agreement after Customer has accepted E-Tail Genius's Offer. The Agreement will be concluded when both parties have signed the License Agreement of E-Tail Genius. The Agreement will be executed starting from the Effective Date.

2.3. Terms or conditions indicated by Customer, that deviate from or are not contained within these Terms, are only binding for E-Tail Genius in case E-Tail Genius explicitly confirmed these deviating terms and conditions in writing.

2.4. In the event of conflict between the relevant provisions, the following hierarchy applies:

- a) The License Agreement;
- b) These Terms;
- c) Other documents or terms agreed upon between parties.

2.5. If Customer requests additional services, which go beyond the scope of the Agreement and the Services described therein, then E-Tail Genius may issue an Offer for such additional services. However, E-Tail Genius is never obliged to issue an offer or to comply with such a request of Customer.

2.6. Customer is obliged to provide all information and cooperation necessary for a correct execution of the Agreement. In case Customer fails to do so, the Effective Date can be changed by E-Tail Genius. Customer will be responsible for all deriving costs thereof.

2.7. E-Tail Genius has the right to use Customers trade name for its promotional purposes.

3. Implementation partner and support

3.1. Before Customer is able to use the Service, the Service first needs to be correctly implemented on Customers (IT) systems. Customer is responsible for finding and engaging an implementation partner who is familiar with Customers IT systems and is able to implement the Service on Customers IT systems.

3.2. Unless agreed upon otherwise E-Tail Genius provides support regarding its Service on a best effort basis during Business Hours.

3.3. When, in the opinion of E-Tail Genius, certain support request fall within the responsibility of Customers implementation partner, then E-Tail Genius will forward such support requests to Customers implementation partner when reasonably possible.

4. Use of the Service

4.1. In order to use the Service, the Customer must have an account. Upon conclusion of the Agreement, the Customer will be provided with a primary account and login information (username and password) to access the Service.

4.2. The Customer must secure access to its account(s) by protecting the username and password against third party access. In particular the Customer must keep any login information strictly confidential. E-Tail Genius may assume that all actions undertaken from Customer's account after logging in with its credentials is

authorized and supervised by the Customer. This means that the Customer is responsible for all activities conducted via its account.

4.3. The Customer must not use the Services:

- a) in any way that is unlawful, illegal, fraudulent or harmful; or
- b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4.4. If in the opinion of E-Tail Genius, the continued functioning of the computer systems or network of E-Tail Genius or third parties may be under threat of being damaged or jeopardized, E-Tail Genius may take all steps it deems reasonably necessary to end or avert such damage or jeopardy.

4.5. It is not permitted to use the Service in a manner that causes a nuisance or hindrance for other users. This includes (among others) the use of personal scripts or programs resulting in large amounts of data being up- or downloaded.

4.6. The Customer is not permitted to access the software source code (including object code) of the Service, either during or after the duration of the Agreement.

4.7. E-Tail Genius endeavours to implement appropriate Service recovery measures in order to be able to recover functionality of the Service, should an incident occur. Due to the nature of the Service, E-Tail Genius is not able to make backups of data saved or transferred by Customer using the Service and therefore Customer is not entitled to claim restoration of data and/or back-ups unless otherwise agreed upon.

5. Intellectual Property Rights and right of use

5.1. Upon the Effective Date and subject to timely payment of the agreed upon fees, E-Tail Genius grants to Customer a non-exclusive, non-transferable and non-sublicensable right to use the Service for a period as stated in the License Agreement. This right is limited to use by Customer within Customer's company or legal entity.

5.2. All Intellectual Property Rights regarding the Service or any other materials provided by E-Tail Genius remain vested in E-Tail Genius or its licensors. The source code of the Service will not be made available to Customer.

5.3. All Intellectual Property Rights regarding Customer's data processed via the Service remain vested in Customer. E-Tail Genius receives a limited license to use Customer's data to provide the Service, including future aspects thereof.

6. Availability and maintenance

6.1. E-Tail Genius endeavors to keep its Services available as much as possible. However E-Tail Genius does not warrant uninterrupted availability.

6.2. E-Tail Genius uses its best efforts to perform maintenance with regard to its Service. Maintenance includes patches, updates and upgrades installed on E-Tail Genius's sole discretion in order to increase performance and/or the security of the Service. E-Tail Genius endeavors to notify Customer in advance via email when planned maintenance will have an impact to the availability of the Service. When reasonably possible, Maintenance will take place when use of the Service is averagely low.

6.3. E-Tail Genius may from time to time change functionalities in its Service. Suggestions and feedback of the Customer are welcome, but ultimately E-Tail Genius will decide which functions will be added or changed.

6.4. If, in the opinion of E-Tail Genius, the functioning of the computer systems or network of E-Tail Genius or third parties is actually or under threat of being damaged or jeopardized, then E-Tail Genius may take all steps it deems reasonably necessary to end or avert such damage or jeopardy.

7. Payment and prices

7.1. As compensation for the Service, the Customer is required to pay the agreed upon fees as stated in the License Agreement. Unless agreed upon otherwise, any amounts must be paid in advance.

7.2. All prices are in euro (€) and excluding VAT, unless the License Agreement states otherwise. E-Tail Genius will send Customer a digital invoice, containing the amount owed for the provided or to be provided Services. Customer must pay invoices of E-Tail Genius within 14 days after the date stated in the invoice.

7.3. If payment is not received within the aforementioned period, statutory interest will be owed and E-Tail Genius will send Customer a payment reminder providing the Customer with an additional 14 days to pay the amounts owed in full.

7.4. If the amounts due are not paid in full within the aforementioned additional 14 days, then Customer will be in default by operation of law and Customer will be liable to pay, in addition to the amounts owed, full compensation for extrajudicial and judicial collecting costs, including costs for lawyers, bailiffs and debt collection agencies, insofar permitted by law.

7.5. When Customer is in default, E-Tail Genius is entitled to suspend the provision of the Services in part or in whole.

7.6. Because of inflation, increased costs or other (market) circumstances, E-Tail Genius is entitled to change the agreed upon fees with a maximum of 5% once every calendar year.

7.7. When E-Tail Genius has reasonable doubts regarding Customers ability to meet all future payment obligations, then E-Tail Genius is entitled to demand assurance for such future payment obligations. In case Customer is not able to provide adequate assurance, E-Tail Genius has the right to terminate the Agreement without taking into account a notice period.

8. Confidentiality

8.1. Either Party that receives Confidential Information from the other Party shall protect the confidentiality of such information with an appropriate degree of care against unauthorized disclosure. Confidential Information will not be disclosed to third parties without prior written consent of the disclosing Party.

8.2. Confidential Information may be disclosed in response to a valid court or other governmental order, provided (if permitted by such order) the disclosing Party is notified as soon as possible after receipt of the order and given an opportunity to seek legal redress against such disclosure.

8.3. Information which would otherwise be Confidential Information shall not be deemed confidential to the extent that the information:

- a) is lawfully obtained by the receiving Party from sources available to the general public such as newspapers, patent databases or informative websites;
- b) is lawfully obtained by the receiving Party from a third party, provided that the third party does not breach any confidentiality obligation towards the disclosing Party;

c) was already in the possession of the receiving Party prior to the date on which it was issued by the disclosing Party; or

d) was developed by the receiving Party independently and without the use of any information of the disclosing Party.

8.4. Upon the first request of the disclosing Party as well as directly after termination of the Agreement, the receiving Party shall destroy or delete all Confidential Information in its possession and report that this has been carried out.

9. Privacy and personal data

9.1. This article applies to the processing of personal data through the Services provided by E-Tail Genius (hereinafter: “Processor”) to Customer (hereinafter: “Controller”).

9.2. The Processor and the Controller will each warrant compliance with the laws and regulations applicable to them, including in any event the laws and regulations related to the protection of personal data, such as the GDPR.

9.3. The Processor will only process personal data in accordance with the (written) instructions of the Controller as set out in the Agreement and as needed to comply with applicable laws and regulations. The duration of the processing activities will be the same as the duration of the Agreement, except if agreed otherwise.

9.4. Controller represents and warrants that it has a valid legal basis to process the relevant personal data and to engage Processor in relation to such processing of personal data. Furthermore, the Controller represents and warrants that the processing of such personal data by Processor is not unlawful and does not infringe any rights of a third party. In this context, the Controller indemnifies Processor of all claims and actions of third parties related to the unlawful processing of personal data.

9.5. Insofar required by applicable law, the Controller makes sure that both parties are familiar with the categories of personal data to be processed by Processor and the categories of data subjects from which the personal data is processed.

9.6. Processor may process the personal data in countries within the European Economic Area (“EEA”). Processing of personal data in countries outside the EEA is allowed when the legal requirements for such processing have been fulfilled.

9.7. In relation to the processing of personal data under the Agreement, Processor is hereby authorized by Controller to engage third party processors (“Sub-Processors”).

Processor shall inform Controller on request about which Sub-Processors are engaged by Processor. Processor endeavors to inform Controller about any planned change in the used Sub-Processors, in which case Controller has the right to object (in writing, within two weeks and supported by arguments) to the proposed change in Sub-Processors. Should Controller object to such change, then the parties will jointly endeavor to find a reasonable solution. If parties cannot come to a solution, then Processor is allowed to make the planned change in the used Sub-Processors and Controller is allowed to terminate the Agreement on the date that Processor will actually make the change in the used Sub-Processors.

9.8. Processor will use its best efforts to take appropriate technical and organisational measures with respect to the processing of the personal data against loss or against any form of unlawful processing (such as unauthorised disclosure, damage, alteration or transfer of personal data), taking into account the state of technology, the costs of implementation, the risks associated with the processing and the nature of the information to be protected. Controller will notify Processor when additional technical and organisational measures are necessary. Parties will then reasonably discuss such additional measures and the potential additional fees to be paid by Controller.

9.9. Processor will use its best efforts to inform Controller of a data breach as soon as possible and at least within 24 hours.

9.10. Where a data subject submits a request to Processor regarding his/her personal data (for example, to inspect, correct or delete the data, or to receive a copy of the data), then Processor will forward the request to Controller and the request will then be dealt with by Controller. Processor may notify the data subject hereof. On request of the Controller, Processor will provide assistance with handling such request to the extent necessary and reasonable. Processor may charge reasonable costs for such assistance.

9.11. In case applicable privacy legislation requires a Data Protection Impact Assessment to be conducted before the intended processing under the Agreement may be carried out, then Processor shall provide Controller with assistance to the extent necessary and reasonable. Processor may charge reasonable costs for the aforementioned assistance.

9.12. The Controller has the right to have audits performed by an independent third party bound by confidentiality to check Processor's compliance with the Agreement. Such audits may only take place after:

- a) the Controller has requested (from Processor) the similar audit reports from independent third parties that are already in Processor's possession; and

b) the Controller has reviewed the aforementioned audit reports and can still provide legitimate reasons to initiate an audit.

An audit may only be undertaken once per calendar year. The Controller shall inform Processor of the audit at least two weeks before the audit shall take place. The costs of the audit, including the costs that Processor has to make to cooperate with the audit, shall be borne by the Controller.

9.13. In the event that the provision of Service to the Controller is discontinued, the Processor will - at the choice of the Controller – delete or return all personal data to Controller, and delete any existing copies, unless further storage of the personal data is required by law.

10. Limitation of liability

10.1. The liability of E-Tail Genius for damages incurred by the Customer as a result of an attributable failure to comply with the Agreement or on any ground whatsoever, is limited per incident (whereby a series of related incidents counts as one incident) to a maximum amount that is equal to one (1) time the agreed upon yearly license fee as specified in the License Agreement, up to a maximum of EUR 10.000,- on a yearly basis.

10.2. The liability of E-Tail Genius for indirect damages, such as: consequential loss, loss of earnings, missed savings, punitive damages, loss of (business) data and damage due to business stagnation, is excluded.

10.3. Any limitations of liability in These Terms shall not apply if and insofar the damage is the result of willful misconduct or deliberate recklessness on the side of E-Tail Genius's management.

10.4. For there to be any right to compensation, the Customer must report the damages to E-Tail Genius in writing as soon as possible after the damage has occurred. Any claim for compensation shall be barred by the mere expiry of a period of six months after the damage-causing incident has occurred.

10.5. Liability on the part of E-Tail Genius for an attributable failure to comply with the Agreement only arises if the Customer gives E-Tail Genius proper notice of default in writing without delay, while providing it a reasonable term to remedy the failure, and E-Tail Genius remains in default as regards compliance with its obligations after that term as well.

11. Force majeure

11.1. Neither Party is obliged to comply with an obligation towards the other under the Agreement if it is prevented from doing so as a result of any anticipated or unanticipated outside cause that is beyond its reasonable control, and which causes the affected party to be unable to comply with the relevant obligation(s), (force majeure).

11.2. Such force majeure includes a circumstance that is not attributable to fault and that is not for E-Tail Genius's account pursuant to the law, a legal act or in common opinion. Force majeure also includes in particular (but without limitation): domestic disturbances, war, transportation blocks, strikes, network attacks such as SYN (synchronous) floods or DDoS attacks, supply stagnation, fires, floods, import and export obstructions, and events wherein E-Tail Genius's suppliers for any reason prevent E-Tail Genius from being able to comply with the Agreement.

11.3. Each Party has the right to suspend compliance with its obligations under the Agreement during the period of force majeure. If this period exceeds ninety (90) days, each of the parties will have the right to terminate the Agreement.

11.4. In the event E-Tail Genius has already complied in part with an obligation under the Agreement at the time the situation of force majeure arises or will be able to comply with this obligation during this period of force majeure, and the part that has been or will be complied with has an independent value, E-Tail Genius will have the right to separately invoice the part that has already been complied with or that will be complied with. The Customer will be obliged to pay this invoice.

12. Duration and termination

12.1. This Agreement is concluded for an initial term of one year, starting from the Effective Date. At the end of each term, the Agreement is tacitly renewed with successive terms equal to the initial term. Each party may terminate the Agreement by the end of the initial or renewed term, with due observance of a notice period of three (3) months.

12.2. Both parties may terminate the Agreement unilaterally and with immediate effect, in case the other party:

- a) is dissolved or ceases to conduct all (or substantially all) of its business;

b) is or becomes insolvent or convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

c) is declared bankrupt or when an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other Party.

12.3. E-Tail Genius is entitled to terminate the Agreement without taking into account a notice period, in case Customer breaches the Agreement in whole or in part and fails to cure such breach within thirty days after receiving notice of such breach from E-Tail Genius.

12.4. Upon termination or expiration of the Agreement, Customer will no longer be entitled to use agreed upon Services. In such event, any implemented Services must be deleted from Customers systems. On first request of E-Tail Genius, Customer will provide proof that it no longer uses or is no longer able to use the Services. E-Tail Genius is entitled to audit or have audits performed by third parties to check Customers compliance with this obligation. Such audit may take place within 5 business days following a notice of E-Tail Genius's intent to perform such audit.

13. Changes to the Agreement

13.1. E-Tail Genius is entitled to change the Agreement, including these Terms, at any time provided it announces the proposed changes to the Customer at least thirty (30) days in advance (via email, E-Tail Genius's website or otherwise).

13.2. During the aforementioned term of 30 days, the Customer may object to the changes in writing. E-Tail Genius will then reconsider and withdraw the amendment if it considers the objection well-founded. However, if E-Tail Genius decides to implement the changes despite the objection, the Customer will have the right to terminate the Agreement as of the moment the changes enter into effect. Use of the Services after the date of effect shall constitute Customer's acceptance of the changes.

14. Miscellaneous terms

14.1. The Agreement shall be governed by Dutch law, excluding any conflict of law provisions contained in Dutch law.

14.2. To the extent not otherwise provided for in mandatory law, all disputes related to the Service or the Agreement will be submitted to the competent Dutch court in the jurisdiction where E-Tail Genius has its registered office.

14.3. If any provision of the Agreement is invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. The parties will furthermore adopt (a) new provision(s) by way of replacement, which implement(s) the intention of the original provision as much as legally possible. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

14.4. E-Tail Genius has the right to transfer its rights and obligations under the Agreement to a third party that acquires the business operations to which the Agreement is subject.

14.5. The version of any communication between the parties received or stored by E-Tail Genius shall be deemed the authentic version, unless the Customer is able to prove otherwise.