

## **Wilhelmsen General Terms and Conditions (GTC)**

### **1 INTRODUCTION**

These general terms and conditions (hereinafter "**GTC**") are between the Wilhelmsen entity ("**Wilhelmsen**") and the customer legal entity (the "**Customer**") as set out in the online subscription form (the "**Order Form**").

The "**Agreement**" includes this GTC, the Terms of Use, the Order Form and such other documents as are referenced in the Order Form.

This GTC specifies the general terms and conditions for the Customer's use of services provided by Wilhelmsen ("**Services**") and relevant documentation made available by Wilhelmsen ("**Documentation**"), including any new releases and/or updates of the Services and Documentation, and shall apply in connection with a paid or free trial subscription to the Services.

Further description of the Services and Documentation are set out in the Agreement.

Terms written with capital first letter shall have the meaning designated to it in the paragraph in which it is written in bold between quotation marks.

### **2 ORDERING OF ADDITIONAL SERVICES**

In addition to the Services set out in the Order Form, the Customer may order available Services from Wilhelmsen's portfolio of services by submitting one or more order forms, which are subject to acceptance by Wilhelmsen. The order forms shall be submitted as instructed by Wilhelmsen unless a User (defined below) can order Services via the User profile functionality available to the User.

### **3 INTERPRETATION AND PRIORITY**

If there is any conflict between the provisions of the Agreement, priority shall be given in the following order, such that the provisions of the document that appear earliest in this list will prevail over the later: the Order Form, this GTC and the Wilhelmsen Terms of Use. If there is any conflict between the appendixes of one or more of the documents listed above, priority shall be given in the order in which such appendixes appear.

### **4 TRIAL PERIOD AND ACCEPTANCE**

From the day Wilhelmsen notifies the Customer that the Service is ready to be delivered, and during the period specified in the Order Form, the Customer may evaluate and test the Service (the "**Trial Period**"). Questions related to the evaluation should be sent to [wss.appsupport@wilhelmsen.com](mailto:wss.appsupport@wilhelmsen.com) as soon as possible during the Trial Period. Wilhelmsen shall be notified immediately if any functional or performance issues are discovered.

The Service is deemed to be accepted and enrolled into a paid subscription:

- a) upon the lapse of the Trial Period, unless the Customer has sent a written cancellation of the Service,

- b) if the Customer takes the Service in its day to day operations before the lapse of the Trial Period, or
- c) continues to use the Service after the lapse of the Trial Period.

If the Customer has completed a Trial Period prior to signature of this Agreement, or if the parties have agreed that no Trial Period shall apply, the Service shall be deemed accepted and enrolled into a paid subscription from the date the Customer has placed an order through the Order Form.

If Customer rightfully cancels the Service in accordance with the above, such cancellation causes the immediate cancellation of this Agreement, without any additional rights, obligations or liability for any of the Parties. The Customer may not hold Wilhelmsen liable for any discrepancies from the Agreement during the Trial Period.

## **5 USE OF THE SERVICES**

### **5.1 Access to use**

The Customer and/or individuals employed or retained by the Customer (each a "**User**") will be granted access to use the Services by Wilhelmsen in accordance with the Agreement.

Wilhelmsen will provide each User with a user name and a temporary password in order to access and use the Services unless otherwise stipulated in the Agreement.

Neither the Customer nor the User(s) shall permit any other than the User(s) access to the Services.

### **5.2 Acceptance of Terms of Use**

The Customer shall ensure that its Users complies with these GTC. The Customer also agrees that the Users' access to Services is conditioned on the Users' acceptance of and compliance with:

- (i) the Terms of Use (and which may also be embedded in the Services); and
- (ii) applicable terms and conditions of any relevant third party providers and/or other third parties, as provided by Wilhelmsen and/or relevant third parties, prior to any use of the Services.

### **5.3 New versions**

Wilhelmsen may update the Services with new versions which may include new functionality, improved performance and other new features.

### **5.4 Use restrictions**

The Customer and the Users shall not and shall not allow any third party to

- i) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from any component of the Services;
- ii) allow third parties to gain access to the Service, or sublicense, transfer, sell or otherwise assign its account at the Services or the Services itself to any third party;
- iii) alter, embed into any other product or otherwise create derivative works of, or otherwise modify the Service;

- iv) remove, alter or obscure any proprietary notices on or in the Services;
- v) interfere with or disrupt the integrity of the Services, software or data;
- vi) attempt to gain unauthorised access; or
- vii) interfere with other customers' or users' use of the Services.

## **6 CUSTOMER DATA AND OUTPUT DATA**

### **6.1 General**

The Services may be dependent on data provided by the Customer ("**Customer Data**"). Such Customer Data are collected through integration with the Customer's third party software for data collection, or provided manually by Customer into the the Services.

Some Services may also generate certain data which in the following will be referred to as ("**Output Data**") below.

### **6.2 Responsibility for Customer Data**

Wilhelmsen waives all liability for any loss related to errors or defects in Customer Data. No claims based on errors or defects in Customer Data or loss of Customer Data may be made against Wilhelmsen unless such error, defect or loss is caused by wilful misconduct or gross negligence by an authorised Wilhelmsen representative.

The Customer shall indemnify Wilhelmsen against all damages, costs, losses and expenses resulting from a third party claiming that the use by Wilhelmsen of Customer Data to provide the Services constitutes an infringement of their Intellectual Property Rights or otherwise is contrary to third party rights.

### **6.3 Responsibility for Output Data**

The Output Data contained in the Services are provided "as is". Wilhelmsen will use reasonable efforts in preparing and providing quality information and content through the Services, but makes no warranty or guarantee about the accuracy, completeness, or adequacy of such content or other information contained in the Services or the effect or results of the use of the Services.

### **6.4 Rights to Customer Data and Output Data**

The Customer grants to Wilhelmsen a non-exclusive, perpetual, non-revocable, worldwide and royalty-free licence to use Customer Data and Output Data from the Services. The Customer agrees and accepts that Wilhelmsen may, subject to the confidentiality provisions set forth in Clause 12, use such Customer data for business purposes, including for statistics, analysis and development of Wilhelmsen's services and to improve the Customer's user experience and business relationship with Wilhelmsen.

## **7 SERVICE LEVELS**

Wilhelmsen will allocate sufficient and necessary competence in order to ensure its performance under the Agreement and will provide the Services with due care and skill.

## **8 FEES AND PAYMENT**

### **8.1 Fees and taxes**

The Customer shall pay the fees as set out in the Agreement or as additionally ordered under the Agreement within thirty (30) days of issue of an invoice by Wilhelmsen. Any fee paid in advance is non-refundable and non-transferrable.

All fees under the Agreement are exclusive of customs, taxes, duties or excises in any form, all of which shall be borne by the Customer, including withholding taxes, except for taxes based on Wilhelmsen's net income.

In the event the Customer is required to withhold federal, state, local or foreign tax in connection with any payments under this Agreement, the Customer may deduct the withholding tax from the payment and pay the tax to the relevant tax authority. Promptly after each such payment, the official tax receipt issued by the tax authority shall be forwarded by Customer to Wilhelmsen to enable it to support a claim for tax credit. If any such tax is levied on the payments, then Customer shall increase the amounts paid to Wilhelmsen so that the amount received by Wilhelmsen, after the withholding tax is deducted from the full amount, is equal to the amount Wilhelmsen would have received if no withholding or deduction had been made.

Unless an invoice issued by Wilhelmsen includes value-added tax, the Customer is responsible for payment of associated value-added tax in accordance with applicable law.

### **8.2 Late payment**

In case of late payment, late payment interest in accordance with applicable law shall accrue from, but not including, the due date to the actual payment date.

### **8.3 Price adjustments**

With effect from every January 1st during the term of the Agreement, Wilhelmsen shall be entitled to increase the fees payable under the Agreement in line with Wilhelmsen's then-current prices and charges. Such an increase shall be notified in writing not less than one (1) month prior to such increase. An increase of fees shall generally reflect an actual increase of costs to Wilhelmsen including the cost of providing the Services and Documentation.

## **9 INTELLECTUAL PROPERTY RIGHTS**

Wilhelmsen shall retain all right, title and interest, including all copyright, patents, inventions, utility models, circuit layout rights, trade secrets, trademarks, trade names, know-how, designs and any other intellectual property rights (collectively "**Intellectual Property Rights**") related to the Service and appurtenant software and documentation, as well as any updates, modifications, improvements and derivatives thereof.

The Customer shall promptly notify Wilhelmsen in the event Customer suspects or becomes aware of any violation, infringement or misappropriation of Wilhelmsen's Intellectual Property Rights by any third party.

## 10 INDEMNIFICATION FOR THIRD PARTY CLAIMS OF INFRINGEMENT

Wilhelmsen will settle and/or defend at its own expense and indemnify the Customer against any relevant and necessary cost, loss or damage arising out of any claim brought against the Customer due to the Services infringing upon the Intellectual Property Rights of a third party, provided that;

- a) the Customer promptly informs Wilhelmsen in writing of any such claim; and
- b) Wilhelmsen is given control over the defence or settlement thereof and that Customer cooperates in such defence or settlement.

Wilhelmsen shall have the option, at its expense to;

- i) modify the Services to avoid the allegation of infringement, while at the same time maintaining substantial compliance with the Agreement;
- ii) obtain for the Customer, at no cost to the Customer, a right to continue utilisation of the Services in accordance with the Agreement free of any liability or restriction; or
- iii) if neither of the previous options is commercially feasible in Wilhelmsen's reasonable opinion, Wilhelmsen may terminate the Agreement immediately upon notice to the Customer.

Notwithstanding the above, Wilhelmsen shall have no responsibility for claims arising from;

- i) modifications of the Services by the Customer or any third party;
- ii) combination or use of the Services with Customer or third party hardware or software not supplied by Wilhelmsen provided that such claim would not have arisen other than for such combinations or use;
- iii) Wilhelmsen's modification of the Services in compliance with written specifications provided by the Customer; or
- iv) use of the Services outside the scope of the rights granted to the Customer in the Agreement.

The provisions in this clause 10 state Wilhelmsen's sole liability and the exclusive remedy of the Customer in connection with a claim for infringement of a third party's Intellectual Property Rights.

## 11 PERSONAL DATA

In order to perform the Service, Wilhelmsen may process certain data about the Customer's Users that contains personal data. Further information about Wilhelmsen's processing of personal data may be provided upon request from the Customer or by reviewing Wilhelmsen's privacy policy which is available here -

<https://www.wilhelmsen.com/disclaimer/>.

## 12 CONFIDENTIALITY

The Agreement and any business-specific information disclosed by either Party to the other (whether oral or written or in visual, electronic or tangible form), including Intellectual Property Rights, shall be regarded as "**Confidential Information**".

Neither Party shall disclose to any third party, neither during nor after the term, any Confidential Information, except for purposes consistent with the administration and performance of a Party's rights or obligations under this Agreement, or as required by law.

Any information being publicly available, independently developed or rightfully obtained from third parties without breach of any non-disclosure obligation shall not be regarded as Confidential Information.

The receiving Party shall immediately notify in writing to the disclosing Party any unauthorised disclosure of Confidential Information and shall take all reasonable steps to mitigate any harmful effect of such unauthorised disclosure.

Notwithstanding the foregoing, Wilhelmsen shall have the right to disclose Confidential Information as part of its product development and marketing activities subject to such disclosed Confidential Information being in an anonymised form.

### **13 PERMITS, TAX AND EXPORT LAW**

The Customer agrees at its own costs, to obtain all necessary permits, approvals and authorization as required for the Service, comply with all national and local laws and regulations applicable to the Service, and pay all taxes which are related to the Service in accordance with clause 8.1.

The Customer shall comply with applicable domestic and international export law applicable to the Service, including any restrictions that may apply for the export of certain types of commodities and technical data and services to specific countries.

The Customer shall indemnify and hold Wilhelmsen harmless from all damages, costs, losses and expenses caused by the Customer or its Users in the following situations: (i) failure to obtain or comply with the above-mentioned permit, approval or authorization; (ii) failure to observe the above-mentioned laws and regulations; (iii) failure to pay the above-mentioned taxes; or (iv) failure to comply with domestic and international export law. Wilhelmsen may at its own discretion and at any time suspend its performance under this Agreement, in whole or in part, if Wilhelmsen reasonably believes that suspension is necessary to ensure compliance with the aforementioned laws and regulations.

### **14 BREACH OF CONTRACT**

Notice of defect or other breaches of the Agreement must be submitted in writing immediately after the issue giving cause to such notice was discovered or should have been discovered.

The defaulting Party shall use its reasonable efforts to remedy the breach without undue delay.

In the event of payment default by the Customer, Wilhelmsen may prior to a 5 (five) days notice stop and make the Service unavailable for the Customer, until full payment (including late payment interest) has been received.

## **15 LIMITATION OF LIABILITY**

Wilhelmsen shall not be liable to the Customer, Users or any third party for:

- i. errors or delays that are outside Wilhelmsen's reasonable control, including general internet or line delays, power failure or faults on any Customer hardware;
- ii. errors or unavailability of third party deliverables used in the Services;
- iii. errors caused by a Customer's or Users' systems or actions, negligence or omissions, which shall be the sole responsibility of the Customer; or
- iv. any loss suffered as a result of the Customer, Users or any third party's utilisation of the content generated by the Service.

Neither Party shall be liable to the other Party for any incidental, special, consequential, or indirect damages of any kind (including without limitation damages for interruption of business, loss of data, loss of profits, loss of goodwill, use or the like).

The maximum annual liability of a Party towards the other Party based on the Agreement shall not exceed in aggregate 50 % of the total remuneration, exclusive of VAT, paid under the Agreement during the last 12 months.

The limitations of liability shall not apply if the Party in question has acted wilfully or with gross negligence.

## **16 TERM AND TERMINATION**

### **16.1 Term**

The Agreement shall commence when the Customer has placed an order through the Order Form and continue until cancelled in accordance with Clause 4 second paragraph litra a) or either Party terminates the Agreement with at least 3 (three) months prior notice.

### **16.2 Termination for cause**

Either Party may terminate the Agreement if the other Party is in material breach of the Agreement and if such breach continues unremedied for a period of sixty (60) days after the Party in breach has been notified of such breach by the other Party.

Either Party may terminate the Agreement upon written notice to the other Party if the other Party becomes insolvent or is unable to pay its debts as they fall due or goes into liquidation either voluntarily or as required by law.

### **16.3 Effects of termination**

Upon expiration or termination of the Agreement

- i) the Customer and its Users shall immediately cease all use of the Services;
- ii) the Customer shall immediately pay all outstanding amounts, whether due or not, to Wilhelmsen; and

- iii) the Customer shall return or destroy, as instructed by Wilhelmsen, all documentation and Confidential Information provided by Wilhelmsen.

## **17 FORCE MAJEURE**

Neither Party shall be liable to the other Party for any delay or failure in performance of any part of the Agreement to the extent such delay or failure is attributable to a force majeure event as defined under Norwegian law. If a force majeure event has lasted for more than three (3) months, either Party may terminate the Agreement with immediate effect.

## **18 ASSIGNMENT**

Wilhelmsen may assign its rights and obligations under the Agreement to an entity within the Wilhelmsen's group, without written consent by the Customer.

The Customer may not assign the Agreement without the prior written consent of the Wilhelmsen, which shall not be unreasonably withheld.

## **19 GOVERNING LAW AND LEGAL VENUE**

The Agreement shall be governed by and construed in accordance with the laws of Norway.

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by fast-track arbitration in accordance with the Rules of the Arbitration and Dispute Resolution Institute of the Oslo Chamber of Commerce in force at any time. The place of arbitration shall be Oslo, Norway. The language of the arbitration shall be English.

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