

# General Terms and Conditions

**Date: 1st of January 2023**

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

## 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 SYMSON 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 SYMSON as well as personal data always qualify as confidential information.

1.4. **Customer:** a natural person or legal entity that concludes an Agreement with SYMSON in order to use SYMSON'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 SYMSON and Customer (accompanied by these Terms), containing a description and pricing of the Service.

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

1.9. **Service(s):** (i) SYMSON's AI platform SYMSON enabling Customer, after implementation, to optimize his pricing and demand forecasting; as well as (ii) any other services that SYMSON provides to the Customer.

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

## 2. Conclusion of the Agreement

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

2.2. If Customer has not yet received a License Agreement from SYMSON, then SYMSON will send Customer a License Agreement after Customer has accepted SYMSON's Offer. The Agreement will be concluded when both parties have signed the License Agreement of SYMSON. 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 SYMSON in case SYMSON 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 SYMSON may issue an Offer for such additional services. However, SYMSON 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 SYMSON. Customer will be responsible for all deriving costs thereof.

2.7. SYMSON 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 SYMSON provides support regarding its Service on a best effort basis during Business Hours.

3.3. When, in the opinion of SYMSON, certain support request fall within the responsibility of Customers implementation partner, then SYMSON 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. SYMSON 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 SYMSON, the continued functioning of the computer systems or network of SYMSON or third parties may be under threat of being damaged or

jeopardized, SYMSON 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. SYMSON 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, SYMSON 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, SYMSON 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 SYMSON remain vested in SYMSON 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. SYMSON receives a limited license to use Customer's data to provide the Service, including future aspects thereof.

## 6. Availability and maintenance

6.1. SYMSON endeavors to keep its Services available as much as possible. However SYMSON does not warrant uninterrupted availability.

6.2. SYMSON uses its best efforts to perform maintenance with regard to its Service. Maintenance includes patches, updates and upgrades installed on SYMSON's sole discretion in order to increase performance and/or the security of the Service.

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

6.4. If, in the opinion of SYMSON, the functioning of the computer systems or network of SYMSON or third parties is actually or under threat of being damaged or jeopardized, then SYMSON 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. SYMSON will send Customer a digital invoice, containing the amount owed for the provided or to be provided Services. Customer must pay invoices of SYMSON 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 SYMSON 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, SYMSON 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, SYMSON is entitled to change the agreed upon fees with a maximum of 5% once every calendar year.

7.7. When SYMSON has reasonable doubts regarding Customers ability to meet all future payment obligations, then SYMSON is entitled to demand assurance for such future payment obligations. In case Customer is not able to provide adequate

assurance, SYMSON 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. By providing its Services, SYMSON processes information in the form of data by which a customer can be identified (hereinafter called "Customer ID"). Since the Customer ID is used by the Customer to identify its customers, the Customer ID can be considered "Personal Data" as defined in article 4 under 1 of the General Data Protection Regulation (GDPR). In this article 9, pursuant to article 4 under 7 GDPR the Customer is the "Controller" and pursuant to article 4 under 8 GDPR, SYMSON is the "Processor". Pursuant to article 28 under 3 GDPR, Processing by a processor

shall be governed by a contract or other legal act. Therefore, the Parties want to define the following conditions, which apply to their relationship in connection with the aforementioned activities on behalf and for the benefit of the Controller.

9.2 The Processor processes the Personal Data only on instructions from the Controller.

9.3 Controller will guarantee that his instructions to the Processor result in a processing by the Processor that will comply with applicable regulations, including - but not limited to the GDPR and will not infringe any third party right(s).

9.4 The processing relates to the storage of the Personal Data for the purpose of providing Services to the Controller.

9.5 Processor only provides access to those Employees for whom this access to Personal Data is necessary for the performance of the Agreement.

9.6 Processor has taken the required security measures, which guarantee an adequate level of protection, taking into account the current state of IT development and the costs of the implementation, in view of the risks involved of the processing and the nature of the data to be protected. At the request of Controller, Processor will make available a list of the security measures that are implemented.

9.7 The Controller has the right to have audits carried out, with the aim of verifying whether the measures and provisions taken by the Processor are providing an adequate level of protection. The Processor will cooperate and provide all information relevant to the audit in a timely manner. The persons conducting an audit will conform to the security procedures as they apply to the Processor shall be in force, insofar as these security procedures have been made known to the Controller. The reasonable costs for the deployment of the auditors and own personnel of Controller and / or a Supervisor and Processor are at the expense of the Controller.

9.8 If substantial irregularities are found during an initial audit, the Controller and / or a supervisor, or a third party engaged by the Controller and / or a supervisor, can take a second audit. If during this second audit it appears that the previously observed irregularities still occur, all costs of the second audit and any further audits will be for the account of Processor.

9.9 In the event of an actual breach or threatened or suspected breach of security, leading to (or likely to lead to) the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to, the data which is likely to result (a) in a risk for the rights and freedoms of a data subject (such as discrimination, identity theft or fraud) or (b) in financial loss, damage to reputation, loss of confidentiality of data or (c) in any other significant economic or social disadvantage ("Security Breach"), Processor shall: i. without delay, but at the latest within 48 hours after having become aware of it, notify the Security Breach to Controller, including all information



indicating the facts and circumstances of the Security Breach; and ii. provide Controller with all information it may need or require in order to be able to learn and limit the (possible) consequences of such Security Breach as much as possible; and iii. act in accordance with Controller's instructions and its obligations resulting from the applicable law regarding such data breach; and iv. make sure that any evidence relating to the Security Breach is contained and stored for the duration of this Processing Agreement (e.g. log files, network analysis data, access control data).

Processor will provide to Controller with the following information on:

- i. the nature of the Security Breach and the most up-to-date facts as far as known or suspected; and
- ii. the (possibly) affected Personal Data; and
- iii. the ascertained and anticipated consequences of the Security Breach for the processing of the Personal Data and the persons involved therein; and
- iv. the measures that Processor has taken and will take to mitigate or undo the negative consequences of the Security Breach.

9.10 Processor will, at the request of Controller, render the requested assistance that Controller deems necessary in order to notify the Dutch Data Protection Authority (Autoriteit Persoonsgegevens) or any other competent supervisory authority and/or the data subjects of a Security Breach. Processor may not submit such a notification without the explicit prior permission of Controller.

9.11 Processor will continuously inform Controller of possible new developments regarding a Security Breach as well as the measures taken to prevent repetition in the future.

9.12 The Processor is bound to secrecy of all Personal Data and information that it processes, except to the extent that such Personal Data or information apparently has no secret or confidential character or are already generally known.

9.13 Parties will contractually oblige persons working for them (including employees) involved in the Processing of confidential (Personal) data (for example, by means of a clause in the employment contract) to maintain confidentiality of said confidential (Personal) data and other information.

9.14 If the Processor is required to provide data on the basis of a statutory obligation, the Processor shall verify the basis of the request and the identity of the applicant and inform the Controller immediately, if possible and/or allowed, prior to the provision.



9.15 The Processor is permitted to make use of Subprocessor(s) within the framework of the Agreement. The Subprocessors that are engaged for the performing of services are: Microsoft Corporation, One Microsoft Way, Redmond, Washington 98052 USA.

9.16 The Processor will always inform the Controller of any changes in the engagement of Subprocessors. The Controller has the right to object to such engagement in a written notice to Processor within 15 days of being informed thereof on reasonable grounds relating to the protection of Personal Data. The Processor and the Controller will work together in good faith to find a mutually acceptable resolution to address such objection. If the parties are unable to reach a mutually acceptable resolution within a reasonable timeframe using reasonable and good faith efforts, the Controller may, as its sole and exclusive remedy, terminate the Agreement and cancel the Services by providing written notice to the Processor.

9.17 The Processor will fully cooperate in order for the Controller to fulfill its legal obligations in the event that a data subject exercises his rights under the terms of the GDPR or other applicable regulations regarding the Processing of Personal Data.

9.18 If a data subject directly contacts the Processor with regard to the execution of his / her rights under the GDPR, then the Processor will not - in the first instance - answer this (unless explicitly instructed otherwise by the Controller), but the Processor will immediately inform the Controller of this with a request for further instructions.

9.19 Regardless of whether the Agreement has terminated or expired, this article 9 remains in effect until, and automatically expires when, Controller deletes all Personal Data of Controller.

9.20 Within one month after the Agreement ends, the Processor shall destroy and/or return all Personal Data, at the Controller's discretion.

## 10. Limitation of liability

10.1. The liability of SYMSON 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 SYMSON 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 shall not apply if and insofar the damage is the result of willful misconduct or deliberate recklessness on the side of SYMSON's management.

10.4. For there to be any right to compensation, the Customer must report the damages to SYMSON 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 SYMSON for an attributable failure to comply with the Agreement only arises if the Customer gives SYMSON proper notice of default in writing without delay, while providing it a reasonable term to remedy the failure, and SYMSON 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 SYMSON's account pursuant to the law, a legal act or in common opinion. Force majeure also includes in particular (but without limitation): network attacks such as SYN (synchronous) floods or DDoS attacks and events wherein SYMSON's suppliers for any reason prevent SYMSON 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 SYMSON 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, SYMSON 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. The 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. SYMSON 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 SYMSON.

12.3. 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 SYMSON, Customer will provide proof that it no longer uses or is no longer able to use the Services. SYMSON 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 SYMSON's intent to perform such audit.

## 13. Changes to the Agreement

13.1. SYMSON 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.

13.2. During the aforementioned term of 30 days, the Customer may object to the changes in writing. SYMSON will then reconsider and withdraw the amendment if it considers the objection well-founded. However, if SYMSON 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.

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 Court of Rotterdam.