

TERMS AND CONDITIONS – KADONATION NV

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These Terms address the general provisions applicable to all Products and Services offered by Kadonation and the specific provisions applicable to the fee-based subscription model.

1. DEFINITIONS

- 1.1. Agreement:** the collective term for all arrangements related to the Products, Services and/or Platform between the Customer and Kadonation. The Agreement consists of (i) the Purchase Orders confirmed by Kadonation; (ii) the Framework Agreement (if relevant); and, (iii) these Terms;
- 1.2. Business Day:** any day – other than Saturday, Sunday or legal holidays in Belgium;
- 1.3. Beneficiary:** any individual receiving Products or Third Party Products that are purchased on the Kadonation Platform or via a Partner;
- 1.4. Customer:** every professional entity accessing the Platform, purchasing Products and/or relying on Services of Kadonation;
- 1.5. Credits:** the non-refundable credits developed by Kadonation, which can be directly purchased via the Platform by a Customer (or received as part of a refund), and subsequently used to purchase Products.
- 1.6. End-User:** any individual authorized by the Customer to access and use the Platform on behalf of the Customer, and (if applicable) authorized by the Customer to purchase Products on the Platform or Third Party Products of Partners;
- 1.7. Framework Agreement:** an agreement containing additional terms agreed upon between the Customer and Kadonation related to the purchase of the Products, the Services and/or the use of the Platform for a defined period.
- 1.8. Force Majeure and Hardship:** all circumstances which were reasonably unforeseeable at the time the Agreement was concluded, are unavoidable, and create (i) the inability on the part of Kadonation to carry out the Agreement and/or Purchase Order, or (ii) make the implementation of the Agreement significantly harder or more difficult than normally anticipated (financially or otherwise). For example (but not limited to): hardship, natural disasters, war, (threats of) terrorism, strikes, lock-out, hacking diseases and pandemics (incl. measures imposed by governmental authorities to prevent the spread of the virus/disease), shortage of personnel, organizational conditions, confiscation, fire, breakage of machinery and/or tools, scarcity of (raw) materials, bankruptcy or delays on the part of suppliers or Partners.
- 1.9. Purchase Order:** a request from the Customer for Products and/or Services, logged in the Platform containing additional terms agreed upon between the Customer and Kadonation related to the purchase of the Products, the Services and/or the use of the Platform;
- 1.10. Partner:** the third party supplier which offers Third Party Products through the Platform;
- 1.11. Platform:** the Kadonation webshop or the Kadonation Select platform, through which the Customer can (i) purchase Products and/or Services, (ii) create and manage End-Users and their roles, (iii) access informational documentation related to the Products and/or Services, and (iv) access the helpdesk;
- 1.12. Third Party Products:** products, goods or services (other than Kadonation gift vouchers) Partners of Kadonation offer through the Platform to the Customer;
- 1.13. Services:** all services performed by Kadonation for the Customer related to the Products and/or the Platform, such as but not limited to subscriptions for the use of the Platform, designing (semi) custom cards/sleeves/boxes and (semi) custom landing pages;
- 1.14. Kadonation:** the public company (NV) “KADONATION”, incorporated under the laws of Belgium, having its registered office at Gordunakaai 61, 9000 Ghent, Belgium, registered under VAT BE-0666.820.362;
- 1.15. Products:** all products (incl. Third Party Products) offered by Kadonation and purchased by the Customer via a Purchase Order;
- 1.16. Smile Gift Choice Concept:** the Kadonation concept via which the employees, freelancers, etc. of the Customer can choose their own gift out of the gift options that were pre-selected and approved by the Customer.
- 1.17. Subscription:** one of the different types of subscriptions available on the Platform;
- 1.18. Terms:** these Terms and Conditions, the Acceptable Use Policy and the Data Processing Policy;
- 1.19. Website:** <https://www.kadonation.com>.

2. APPLICABILITY OF THE TERMS

- 2.1.** The Customer acknowledges having read and understood these Terms before creating an account and/or accepting them prior to placing a Purchase Order with Kadonation.
- 2.2.** Unless explicitly agreed otherwise in writing (e.g. in the Agreement), the offering, sale and delivery of all Products and/or Services by Kadonation shall be governed by the present Terms. The Terms shall always take precedence over any terms and conditions of the Customer, which shall not be enforceable against Kadonation, even if the Customer (later) declares them the only valid terms. In the event that explicit preference is given in writing to the terms and conditions of the Customer, the following Terms shall remain valid in a supplementary way. The Terms apply to the entire (contractual) relationship between the Parties, including individual orders or contracts for specific Products and/or Services.
- 2.3.** All transactions between Kadonation and the Customer are governed by (in descending hierarchical order, with the next applying in the absence or non-application of the previous): (i) the Purchase Orders, (ii) the Framework Agreement; (iii) the Terms, and; (iv) Belgian law.
- 2.4.** These Terms can be provided in different languages upon request of the Customer. However, these translations are merely a commercial gesture of Kadonation. In case of a difference in interpretation between the different versions, the (original) English version shall prevail.

3. PURCHASE ORDER & ESTABLISHMENT OF AN AGREEMENT

- 3.1.** All proposals and quotations of Kadonation, either verbal or in writing: (i) are non-binding, (ii) merely provide an indication of the Platform, the Products, the Services and the fees, and (iii) shall be subject to further negotiations between Kadonation and the Customer. During these negotiations, the proposal or quotation shall continuously evolve. Any changes to a proposal or quotation renders the previous version null and void.
- 3.2.** The weights, measurements, capacities and other details that are included in the Platform or on the Website are only meant to be approximations. These details only bind Kadonation insofar as this is explicitly stated.

3.3. The Customer shall be responsible for the accuracy of any Purchase Order it submits. The Customer shall also be responsible to give Kadonation all necessary information relating to the Products and/or Services within a reasonable period of time to enable Kadonation to perform all individual contracts in accordance with its Terms (e.g. requested type of custom design).

3.4. Kadonation will engage Partners for the proper execution of the Purchase Order as it sees fit.

3.5. An Agreement related to a specific Purchase Order is concluded (the following in the absence of the preceding): (i) by signing a Purchase Order, (ii) the written acceptance of the proposal and/or quotation by the Customer, (iii) the order confirmation by Kadonation, (iv) through payment by the Customer, (v) by placing an order directly via the Platform; (vi) as soon as Kadonation starts to perform the order after being placed by the Customer.

4. CANCELLATION

4.1. Cancellation prior to delivery to Customer

4.1.1. In the event of cancellation of a Purchase Order for Kadonation gift voucher by the Customer (without this being due to a shortcoming of Kadonation), Kadonation reserves the right to charge lump sum damages amounting to a percentage of the total value of fees (excl. VAT and the voucher value), with a minimum of 100,00 EUR, and such without prejudice to Kadonation’s right to compensation for higher proven damage. If the Purchase Order is cancelled:

- before the start of the production of the Kadonation gift voucher or the performance of the Services, the cancellation fee is 20%; and
- after the start of the production of the Kadonation gift voucher or the performance of the Services (e.g. the custom design), the cancellation fee is 80%.

4.1.2. The Customer can never cancel a Purchase Order for either Products or the Smile Gift Choice Concept.

4.2. Cancellation prior to delivery to Beneficiary

4.2.1. Cancelling, ordered – but not yet delivered – Kadonation gift vouchers is solely possible within the three (3) months following the Purchase Order. Such cancellation must be done in the format as provided by Kadonation (e.g. communication of gift voucher code). Upon proper cancellation, the Customer will be refunded the ordered amount in the form of Credits. These Credits will expire within one (1) year. Kadonation reserves the right to charge an admin fee of 3,50 EUR per cancelled Kadonation gift voucher.

4.2.2. In the event of cancellation of a Purchase Order by the Customer for the Smile Gift Choice Concept, maximum 10% of the Purchase Order can be cancelled. Upon proper cancellation, the Customer will be refunded the corresponding amount in the form of Credits. These Credits will expire within one (1) year. Kadonation reserves the right to charge an admin fee of 3,50 EUR per cancelled Kadonation gift voucher.

4.2.3. The Customer can never cancel a Purchase Order for Products.

4.3. Cancellation as of delivery to Beneficiary

4.3.1. As of delivery, Kadonation gift vouchers and Products can never be cancelled.

4.3.2. Our goal for the Smile Gift Choice Concept is to reward each employee, freelancers, etc. of the Customer with a gift. Smile Gift Choice code that are not timely and/or properly redeemed can never be refunded. However, Kadonation will ensure that these Beneficiaries will receive a gift. This can be a surprise gift with an equal value or a Kadonation gift voucher to use on the Platform and will be mutually agreed upon between Kadonation and the Customer.

4.3.3. The Customer can never cancel a Purchase Order for Products.

5. PURCHASE OF PRODUCT

5.1. Delivery

5.1.1. Kadonation delivers the Products to the Customer as agreed upon in the Agreement. The expected time of delivery of the Products is provided on the Platform but is approximate and not binding. Exceeding the scheduled delivery time can thus not give rise to fines, damages, substitution or termination of the Agreement at the expense of Kadonation.

5.1.2. All Third Party Products shall be delivered to the Customer/End-User/Beneficiary by the suppliers/manufactures (or their agents) of said Products, unless explicitly communicated otherwise to the Customer/End-User/Beneficiary. Accordingly, Kadonation cannot be held responsible for the late delivery of such Third Party Products (cfr. the above).

5.1.3. All Products to be supplied by Kadonation under the Agreement shall be sold and delivered ‘Delivery At Place (DAP) at Customer’s or other appointed location (Incoterms 2020® rules or equivalent under future rules). The foregoing applies even if delivery is handled by Kadonation in which case Kadonation will act as a mandatory of the Customer.

5.1.4. If the Customer refuses the order upon delivery or is negligent in providing assistance to facilitate the delivery at the indicated delivery address, Kadonation is entitled – at the expense and risk of the Customer – to take all reasonable measures in this respect.

5.1.5. Every immaterial Product (e.g. electronic Kadonation gift voucher) is considered delivered as soon as it is made available to the Customer through the Platform or another agreed upon electronic medium.

5.2. Retention of title

5.2.1. Kadonation retains the entire ownership of all Products delivered to the Customer for as long as the Customer has not fully paid the price, costs, interests and all other accessories related to purchase of the Products.

5.3. Non-conformity and visible defect:

5.3.1. The Customer must verify the conformity of the Products upon delivery. If the Product presents a visible/material defect, the Customer must immediately (and no later than two (2) Business Days after the delivery) notify the non-conformity and/or visible defect – at the risk of forfeiture – by e-mail, to the address: business@kadonation.com. The Customer shall keep the Products with visible defects available for inspection by Kadonation.

5.3.2. If the Product is based on a custom design (cfr. **Article 3**), the Customer acknowledges minor variations (e.g. in color) between the Product and the sample/proof of concept are not to be considered a defect or a non-conformity.

5.4. Hidden defects

5.4.1. The Customer must inform Kadonation of any hidden defect by e-mail to the address business@kadonation.com no later than two (2) Business Days after it has/should have been detected, and in any case within twelve (12) months upon delivery, at the risk of forfeiture.

5.4.2. Under penalty of disallowance of the complaint, the Customer:

- must be able to prove that it has ceased the use of the Products immediately after detection of the hidden defect;
- must be able to prove that the defect was not a result of attempted money laundering and/or credit card fraud with the Products;
- must be able to prove it has used the Products in accordance with the documentation available on the Platform, the Website and/or the Products; and;
- shall assist Kadonation as much as possible with its investigation of the complaint.

5.4.3. Kadonation shall check and examine the Products and investigate the complaint within ten (10) Business Days of receiving (a sample of) the defective Product. The cost of such examinations shall be payable by Kadonation only to the extent the claim of the defect is found to be legitimate. If the claim is illegitimate, the Customer will reimburse all costs of examination.

5.4.4. Kadonation cannot be held liable for, nor does it warrant defects caused by:

- normal wear and tear, incorrect/improper treatment or maintenance, external influences, Force Majeure and Hardship;
- an act of the Customer or a third party, regardless of whether these were caused by a fault or negligence.

5.4.5. Physical return of the defective Products requires prior written approval by Kadonation. In absence of its approval, all returned shipments will be refused and the costs arising thereof shall be passed on to the Customer.

5.5. Third Party Products – Recalls

5.5.1. If Kadonation becomes aware of any unexpected adverse effect associated with the use or consumption of the Third Party Products, or any defect/event or circumstance that might potentially harm the Customer/End-User/Beneficiary, and therefore necessitates the recall of said product, it (or its Partners or suppliers) shall notify the Customer thereof in as soon as possible upon discovery. The Customer shall provide the necessary assistance to Kadonation in notifying the End-Users and/or the ultimate Beneficiaries of the Third Party Products. Kadonation shall be entitled to decide at its own discretion either (i) to replace the defective/recalled Third Party Product with a new one; (ii) or to compensate the Customer/End-User/Beneficiary for this Third Party Product (either in full or in the form of a credit note or voucher). Kadonation shall not be liable for any further use or application of the Third Party Product after such notification.

6. PERFORMANCE OF SERVICES

6.1. The Services

6.1.1. All obligations of Kadonation regarding its Services are to be considered best-effort obligations. Hence, Kadonation shall always provide the Services with due diligence, with appropriate care and in good faith, and shall carry out the Services to the best of its understanding, skill, insight and ability, as reasonably expected of a professional experienced in services of comparable scope, complexity and size. However, Kadonation does not guarantee a certain result.

6.1.2. The Platform of Kadonation is provided to the Customer "AS-IS". All obligations of Kadonation regarding the Platform are to be considered best efforts obligations.

6.1.3. Any complaints concerning Kadonation's Services shall only be admissible if submitted to Kadonation in writing within a period of two (2) Business Days following the discovery of the problem by the Customer and at the latest within a period of one (1) month following the performance of the Services. Complaints shall always be submitted to Kadonation by e-mail to the address business@kadonation.com, providing identification of the Services and a detailed justification of the complaint. In the absence of a detailed and/or timely complaint, the Customer shall be deemed to have irrevocably accepted the Services.

6.1.4. After the Customer has observed any deficiency or problem, the Customer is obliged to immediately cease the use of the Services and make every reasonable effort – or have every reasonable effort made – to prevent any (further) damage.

6.1.5. The Customer shall pay any costs incurred as a result of unjustified complaints.

6.2. Subscriptions

6.2.1. Kadonation offers three different types of subscriptions to use and access the Platform, named: (i) Basic, (ii) Professional or (iii) Enterprise. Each Subscription has specific characteristics and/or features. The Customer acknowledges to have conducted the proper research prior to selecting the appropriate Subscription. Changes to the Subscription and/or its functionalities can solely be done with written approval of Kadonation.

6.3. Custom design

6.3.1. Kadonation will provide a sample/proof of concept of the custom design (e.g. cards, sleeves, boxes or webpages) to the Customer, if agreed upon in the Agreement. The Customer must send Kadonation written confirmation with the sample/proof of concept at the latest fifteen (15) Business Days before the requested delivery date. Change requests or refusals must be properly substantiated in writing.

6.3.2. The Customer must provide Kadonation with all information/documentation (such as but not limited to logo's, prior designs, color schemes and messages) and support (deemed necessary by Kadonation) needed to provide the Services or produce the Products. Kadonation is not obligated to verify the accuracy of the information/documentation provided by the Customer.

6.3.3. If the Customer request Services related to custom design, Kadonation shall not commence the production of the Products before it received all information, support and/or approvals of the Customer.

6.3.4. The specifications and instruction required of the custom design needs to be provided by the Customer, The Customer is at all times responsible for the accuracy and completeness of the data provided (such as the design of the Customer's platform and the pre-selected gifts in case of the Smile Gift Choice Concept).

6.3.5. Kadonation can deliver a custom design in case of the Smile Gift Choice Concept in accordance with this **Article 6.3** to implement the Customer's branding.

7. PLATFORM

7.1. Kadonation grants the Customer a (free) personal, limited, non-exclusive, non-assignable and non-transferable access and use right to the Platform.

7.2. The Customer is entitled to access and use the Platform in accordance with the Terms, and shall use its best endeavors to prevent or terminate any unauthorized access to or use of the Platform. If the Customer discovers such unauthorized access and/or use, it shall notify Kadonation immediately, which is entitled to take all necessary or useful measures to remedy such access and/or use.

7.3. The Customer is responsible to communicate the [Acceptable Use Policy](#) to its End-Users and if not, the Customer will be responsible for the acts and omission of its End-Users.

7.4. In the event of problems with the availability of the Platform, Kadonation undertakes its best effort to solve such issue as soon as reasonably possible without giving any guarantee. In any case and where appropriate,

Kadonation shall be free to determine what is to be considered an adequate solution for its Customers in this respect.

7.5. Kadonation performs maintenance activities and implements updates of the Platform on a regular basis. Kadonation strives to minimize the impact on the availability of the Platform by performing the maintenance activities and the updates outside of the business hours (09:00 – 17:00 CET +1) but does not exclude any downtime in this respect.

7.6. All documentation provided in the Platform regarding the legislation, regulations, etc. regarding the use of the Products and/or Services is purely informational.

8. DURATION & TERMINATION

8.1. The duration of the Subscription is described in the Purchase Order, which can either be one month or one year.

8.2. The Subscription shall automatically be renewed for a period equal to the originally agreed upon duration, unless either party gives notice of termination to the other party. In case of termination of a yearly Subscription at the latest one month before the end of the term. In case of termination of a monthly Subscription at the latest before the end of the month.

8.3. The Customer can give notice by sending an email to their Kadonation customer success manager. Failure to do so will obligate the Customer to pay the invoice for the renewed duration, even if the Customer has no intention to continue its use of the Platform. The new fees of Kadonation shall be applicable upon renewal.

9. FREE TRIAL

9.1. Kadonation can offer – at its own discretion – a free trial of three (3) months, during this trial period the Customer can test the Professional or Enterprise Subscription model for free.

9.2. If the Customer does not conclude an Agreement during this three (3) monthly period, the Customer will be automatically reassigned to the Basic Subscription model with a free, personal, limited, non-exclusive, non-assignable and non-transferable access and use right to the Platform without the additional features.

9.3. During this free trial the Customer has the possibility to test the premium features that are normally only available as part of a paid Subscription model. However, Kadonation will never deliver specific additional services and/or assistance to the Customer during the free trail (such as, but not limited to, integration and synchronization with the systems of the Customer).

10. KADONATION GIFT VOUCHER

10.1. The Kadonation gift voucher has a validity of three (3) years as of creation and can be redeemed or activated by the Beneficiary during this period. The expiration date will be indicated on the Kadonation gift voucher.

10.2. In case the Kadonation gift voucher is exchanged for a gift voucher with the Partner, the terms and conditions – as well as the validity and expiration conditions – of the Partner shall apply.

10.3. Before the moment of exchange, Kadonation gift voucher can be cancelled in accordance with **Article 4**. As of the moment of exchange, the gift voucher with the Partner can never be refunded.

11. PRICES

11.1. The price of the Products and/or the Services is as stated on the Platform, to the extent applicable. Price calculations or offers are indicative and non-binding until formally accepted by Kadonation. In no event shall prices confirmed by Kadonation for one order be binding for subsequent orders.

11.2. The prices exclude transport costs, loading or unloading costs, insurance costs, packaging costs, VAT, levies, import and export duties, etc. (if applicable), unless explicitly stated otherwise in writing.

11.3. Kadonation is at all times entitled to update the price of the Products on the Platform.

11.4. If the delivery term, the place of delivery, or the circumstances of the delivery change at the request of the Customer, or if the Customer has provided incorrect information to this end, Kadonation is entitled to a reimbursement of the additional costs incurred.

11.5. If, in the period following the conclusion of the Agreement and before the delivery of the Products and/or Services, the prices and Subscription prices (that are based on the then current level of wage costs, social security and government charges, transport and insurance costs, raw material prices, costs of materials and components, exchange rates and/or other costs) increase or decrease in one or more of these objective price factors, Kadonation reserves the right to change its prices accordingly and this in accordance with the legally permitted standards.

11.6. Subscription prices can be consulted via <https://kadonation.com/en/pricing>. The Customer can obtain additional features in the Platform through the paid Subscription and can choose between two different subscription models:

- i) **Professional:** monthly or yearly access and use right to the Platform with a one-time set-up fee and the possibility of delayed payments;
- ii) **Enterprise:** access and use right to the Platform with a customized price as a monthly or yearly price where the Customer can choose for a custom design branded gift experience and has the possibility of delayed payments.

11.7. Insofar as the Subscription prices are based on the current level of wage costs, social security and government charges, transport and insurance costs, raw material prices, costs of materials and components, exchange rates and/or other costs applicable at the time, and in the event of an objective and significant increase of one or more of these price factors, Kadonation shall be entitled to increase its Subscription prices yearly accordingly and in accordance with the legally permitted standards.

12. PAYMENT

12.1. Basic Subscription

12.1.1. When using the free version of the Kadonation Platform, the Customer must complete full payment at order check-out.

12.1.2. A Customer can request certain alternative payment formalities, such as payment by invoice and a specific payment term. However, Kadonation reserves the right to – at its own discretion – approve or deny such requests (e.g. following financial and credit checks). These advantageous payment modalities can at all times be revoked by Kadonation.

12.2. Professional or Enterprise Subscription

12.2.1. If the Customer opts for a paid Subscription, Kadonation's invoices are payable within fourteen (14) calendar days after the invoice date.

12.2.2. Kadonation's invoices are payable to Kadonation's designated bank account at the latest on the due date indicated on the relevant invoices. The invoice has been settled when the complete amount stated on the

invoice has been received on Kadonation's designated bank account as indicated on the invoice. All fees - unless specifically stated otherwise in the Agreement - do not include VAT or any other levies or taxes. All invoices from Kadonation are to be paid in the indicated currency or via Credits that can be purchased via the Platform. All bank and exchange costs connected to the collection of the amount will be charged to the Customer.

12.2.3. By or the Products and/or Services, the Customer agrees to electronic invoicing by Kadonation.

12.2.4. If the Customer fails to pay in full any invoice by the due date, or fails to pay in full any other payment due to Kadonation under any Agreement between parties and/or these Terms by the due date for payment, then:

- the Customer shall pay interest on the overdue amount at the rate of 10% per year (except if the legal rate of interest is higher, it shall be applied). Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. The Customer shall pay the interest together with the overdue amount; and
- the Customer shall pay Kadonation 5% of the outstanding balance, with a minimum amount of 250,00 EUR for costs associated with a.o. the collection of the amounts due and with the adverse consequence on Kadonation's cash flow, as liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of Kadonation's loss.

This paragraph is without prejudice to Kadonation's right to prove and claim any higher damages.

12.3. Late, incomplete or non-payment

12.3.1. Late, incomplete or non-payment of one expired invoice will cause all other invoices, for which a particular instalment term has been agreed on, to become immediately payable, without previous notice of default. Interest for late payment is due as from the moment that the non-expired invoices become payable. Liquidated damages may in addition be due in accordance with **Article 12.6** (second paragraph). Partial payments will firstly be deducted from interest due, liquidated damages payments and possible costs and only then from unpaid invoices.

12.3.2. In the event of late or non-payment, the Customer guarantees that other entities that are bound with the Customer within the meaning of article 1:19 and 1:22 of the Code for Companies and Associations can be held responsible for any payments, costs and/or fees in connection with the Agreement, and any default by such entity shall be deemed a default of the Customer.

12.4. General

12.4.1. Kadonation is entitled to suspend or postpone its obligations in connection with the current Purchase Orders to the extent that the Customer has not complied with a payment condition or other obligation.

12.4.2. Invoices that are not disputed by registered letter within eight (8) days after their issuing will be considered to have been fully accepted.

12.4.3. Promotional gifts by Kadonation, in any form whatsoever (including, but not limited to fee reductions and discounts), shall only be applicable in accordance with the guidelines and conditions expressly stated in this regard. The Customer acknowledges that such promotional gifts are (i) not cumulative; (ii) personal by nature; and, (iii) can never entail an implied right thereto.

13. LIABILITY

13.1. Kadonation's liability shall always be assessed in the light of the best efforts obligation to which Kadonation has committed. The liability of Kadonation is in any case limited to the mandatory liability imposed by law.

13.2. Kadonation's liability for the Products is limited to the invoice value of the Products delivered by Kadonation to the Customer, and shall lead to Kadonation's decision (at its sole discretion) to (i) replace the Product; or (ii) credit the invoice amount of the Product.

13.3. In the case of inadequate Services, Kadonation's liability is limited – at the option and discretion of Kadonation – to the (renewed) performance of the missing or inadequate Services. If the (renewed) provision of the Services is not (or no longer) possible or reasonable, the Customer is entitled to compensation in light of the damage suffered.

13.4. Kadonation cannot accept any claim from the Customer for indemnification for:

- damage caused because the Customer did not pay the Subscription fee according to the Agreement;
- defects that are caused directly or indirectly by an act of the Customer or a third party, regardless of whether they were caused by a fault, negligence or carelessness;
- damage caused by all incorrect or inadequate use of the Product and/or Services;
- damage caused by use of the Products and/or Services incompatible with the legislation and/or regulations applicable to the specific use of the Products and/or Services;
- damage caused by use and/or consumption of the Products in a manner that is incompatible with the instructions or other information/documentation (such as, but not limited to: user instructions, dietary restrictions and allergens) provided by Kadonation and/or the supplier of the Product or as published on the Platform;
- damage caused by decisions of the Customer based on the use of the documentation available on the Platform;
- damage caused by the further use or application by the Customer after a problem has been detected and/or after it was requested to return the Product (e.g. in the scope of a recall);
- damage caused by Force Majeure in accordance with the provisions of **Article 14**; and,
- indirect and consequential damage, such as, but not limited to, loss of profit, loss of savings, loss of revenue, loss caused by business interruption, damage to third parties.

13.5. The Customer assumes the responsibility for the use made of the Products and/or the Services by its End-Users, including but not limited to the proper and legal use of the Platform.

13.6. The Customer will hold Kadonation harmless against all claims from third parties arising from the incorrect or unlawful use of the Products and/or Services by the Customer or its End-Users. It will cover all damages such as compensations or legal costs (including reasonable lawyer's fees) providing that Kadonation has informed the Customer immediately of any claim arising from that matter.

13.7. The Customer expressly declares to accept that Kadonation calls upon employees and directors for the execution of the Agreement. The Customer expressly undertakes that in case of errors within the meaning of Article 6.6. of the Civil Code by the employees or directors which could give rise to a direct non-contractual claim as referred to in Article 6.3. of the aforementioned Code, the Customer will exclusively address Kadonation for any damage suffered. The Customer thus expressly waives its direct claim against the employees or directors, as referred to in Article 6.3. of the Civil Code. This waiver of claim does not apply in case of fraud, deceit and/or intent on the part of the employees and directors, or if the shortcoming also constitutes a criminal offence.

14. FORCE MAJEURE & HARDSHIP

14.1. Cases of Force Majeure and/or Hardship give Kadonation the right, at Kadonation's option, to either (i) temporarily suspend the performance of its obligations; (ii) review the contractual terms (including those with regard to timeframes, completion deadlines and fees); or, (iii) terminate the Agreement by simple written notification to the Customer, without Kadonation being liable for any damages.

14.2. A situation of Force Majeure and/or Hardship that continues beyond three (3) months shall entitle the Customer to terminate the Agreement with immediate effect by simple written notification to Kadonation, without judicial intervention and without any liability on the part of Kadonation.

14.3. The Customer shall always be required to pay all fees for Services and Products that have already been performed resp. provided on the date of suspension, revision or termination, and any costs incurred or still to be incurred by Kadonation as a consequence of the suspension, revision or termination.

15. CONFIDENTIALITY

15.1. All information marked as confidential or reasonably to be considered confidential, disclosed by the Parties prior to entering into an Agreement as well as during the Agreement shall be treated by the Parties with the utmost secrecy.

15.2. The Parties shall:

- not use, reproduce, or allocate the confidential information in any manner or for any other purpose than the cooperation between Kadonation and the Customer;
- not engage in, nor authorize others to engage in, the reverse engineering, disassembly or the decompilation of any of the confidential information; and,
- not derive any commercial benefit from the confidential information;

15.3. This confidentiality obligation applies during the course of the cooperation between Kadonation and the Customer and will continue to exist for a period of five (5) years starting from the termination of the cooperation for any reason whatsoever.

15.4. The Parties shall remain at any moment the sole owner of its confidential information. Except as expressly set forth herein, nothing in these Terms or the relationship between parties shall grant to the Customer any rights to or interest in the confidential information, and no implied licenses are granted by these Terms.

15.5. This confidentiality obligation shall, however, in no event imply that Kadonation shall not be entitled to use and/or commercialize any ideas, input, feedback received from the Customer, which may serve to improve and/or expand the Products and/or Services.

16. INTELLECTUAL PROPERTY RIGHTS

16.1. All registrations of the trade names/trademark Kadonation, or any other trade name/trademark that includes the name Kadonation, or under which the Products and/or Services are sold, shall be made in the name of Kadonation. The Customer shall not use Kadonation's company name, Kadonation's Products and/or Services names or Kadonation's Products and/or Services trademarks as part of Customer's name or in any manner capable of misrepresenting the relationship between Customer and Kadonation. The Customer shall not alter, remove or tamper with the brands, trademarks, or other means of identification on the Products and/or Services.

16.2. The Customer grants Kadonation a license on all intellectual property needed to perform the Agreement (such as but not limited to the information/documentation needed to develop custom designs for the Customer).

16.3. The Customer acknowledges the information/documentation provided to Kadonation regarding custom designs (cfr. **Article 6.3**) does not infringe any third party its intellectual property rights, and indemnifies Kadonation for all claims in this regard.

16.4. The Customer explicitly acknowledges that Kadonation shall own and retain all (intellectual) property rights with respect to the Products, Services and the Platform (including all custom designs, copies, modifications, extensions and derivative works thereof). In its turn, Kadonation explicitly acknowledges that the Customer shall own and retain all (intellectual) property rights with respect to its activities and shared information.

16.5. The Customer will allow Kadonation to use the Customer's name and/or project as a reference for publicity purposes, such as by publication on the Website or in a Sales presentation. In this regard, the Customer also authorizes Kadonation to use the Customer's name, trademark, logo, etc. The Customer at all times has the right to withdraw this consent to the use of Customer's name and/or project by means of a written communication.

17. PRIVACY

17.1. Kadonation as controller

17.1.1. The collection by Kadonation of personal data of the (potential) Customer and/or its personnel/staff shall take place in accordance with the provisions of Kadonation's Privacy Policy. In such event, Kadonation acts as controller. This Privacy Policy includes information about the personal data collected by Kadonation, as well as the manner in which Kadonation uses and processes this personal data. Kadonation's Privacy Policy can be consulted via <https://kadonation.com/en/client-service/privacy-policy>.

17.1.2. By ordering the Products, Services and/or entering into an Agreement with Kadonation, the Customer acknowledges to have read and accepted the privacy declaration.

17.2. Kadonation as processor

17.2.1. The Customer acknowledges that – with regard to the processing of all data of the Customer and/or End-User entered and uploaded into the Platform – it shall act as controller and Kadonation as processor. All arrangements made between parties in this respect shall be solely governed by the [Data Processing Policy](#).

17.2.2. The Customer acknowledges explicitly that by using the Platform, ordering the Products and/or entering into an Agreement with Kadonation to have read and accepted the Data Processing Policy in its entirety.

18. CHANGES TO THE TERMS

18.1. Kadonation reserves the right to amend the offer and composition of its Services and/or Products at any time. New or amended Terms shall apply upon renewal of the subscription or in any case from the thirtieth (30th) day after they were made known to the Customer (e.g. through a notification on the Website and/or the Platform).

19. NETTING

19.1. In accordance with the stipulations of the Law on Financial Collateral dated 15 December 2004, Kadonation and the Customer will automatically and legally compensate and offset each other for all current and future debts.

20. MISCELLANEOUS

20.1. Entire agreement

20.1.1. Agreement contains the entire agreement between Kadonation and the Customer and replaces all previous negotiations, understandings or agreements concerning the same subject.

20.1.2. Any failure or delay by Kadonation in exercising any right under an Agreement and/or these Terms with the Customer, any single or partial exercise of any right under such Agreement and/or these Terms or any partial reaction or absence of reaction by Kadonation in the event of violation by the Customer of one or more provisions of such an Agreement and/or these Terms, shall not operate or be interpreted as a waiver (either express or implied, in whole or in part) of Kadonation's rights under such Agreement, these Terms or under the said provision(s), nor shall it preclude any further exercise of any such rights. Any waiver of a right must be express and in writing. If there has been an express written waiver of a right following a specific failure by Kadonation, this waiver cannot be invoked by the Customer in favor of a new failure, similar to the prior one, or in favor of any other kind of failure.

20.1.3. Any notice to be given under these Terms and/or the Agreement shall be deemed duly given when sent by e-mail and postage prepaid or courier and addressed to the other party's address. It shall be deemed received three (3) working days after the date of dispatch in the case of e-mails and in the case of postage prepaid or courier on the date of receipt by the other party.

20.1.4. If any part or any clause of these Terms and/or the Agreement is for whatever reason held to be illegal, invalid or unenforceable, such provisions shall be deleted and the remaining parts or clauses shall not be affected and shall remain valid and enforceable as if the invalid or unenforceable parts or clauses were not part of the Terms and/or the Agreement.

20.1.5. If any part or any clause of these Terms and/or the Agreement is for whatever reason held to be illegal, invalid or unenforceable, such provisions shall be deleted and the remaining parts or clauses shall not be

affected and shall remain valid and enforceable as if the invalid or unenforceable parts or clauses were not part of the Terms and/or the Agreement.

20.1.6. Any such part or clause shall be replaced by a provision that, insofar as legally possible, comes closest to the intention of Parties in the affected part or clause. Parties shall in good faith negotiate and agree a mutually acceptable provision that shall replace the deleted provision.

20.1.7. This Agreement and the rights and obligations ensuing from it for the Customer may not be transferred either directly or indirectly without the written consent of Kadonation.

20.1.8. Kadonation shall have the right to transfer this Agreement and the rights and obligations ensuing from it to a third party. In that case a new agreement between the Customer and the third party shall be concluded with terms and conditions (rights and obligations) identical to those in this Agreement for the remaining term.

21. JURISDICTION AND APPLICABLE LAW

21.1. The Parties hereby undertake to apply the CEPANI Mediation Rules to all disputes arising out of or in connection with this Agreement. Should the mediation fail, any disputes arising out of or in relation with this Agreement shall be finally settled under the CEPANI Rules of Arbitration by one or more arbitrators appointed in accordance with those Rules. The seat of the arbitration shall be Ghent. The arbitration shall be conducted in the Dutch or English language.

21.2. The present Terms as well as any Agreement between parties, of whatever nature, are governed by and construed in accordance with the laws of Belgium, with exclusion of (i) all conflict of laws rules, (ii) the UN Convention on the International Sale of Goods (1980), and (iii) the NY Convention on the Limitation Period in the International Sale of Goods (1974).

21.3. Without prejudice to any other provision of these Terms, any claims by the Customer arising out of or in connection with an Agreement between parties will in any event become time-barred after expiration of one (1) year as from the date of delivery of the relevant Products and/or Services.