



## GENERAL TERMS AND CONDITIONS

These terms and conditions are entered into between:

- LivePepper SARL, a French company registered in the Grasse Trade and Companies Register under number 495 233 249 00020, the registered office of which is at 1681 Route des Dolines, 06560 Sophia Antipolis, and that is represented by its Manager, Mr Monnier, hereinafter referred to as '**LivePepper**', '**We**' or '**Us**'; and
- any individual or legal entity – private or professional – governed by private law or public law that wishes to use one or more of the services provided by LivePepper, hereinafter referred to as the '**Client**' or '**You**'.

The Client and LivePepper are hereinafter collectively referred to as the '**Parties**'.

Having seen the demonstrations made to You, having received information and advice from Us and further to our exchanges, You declare that You have received all the information You wished to receive and have expressed a wish to benefit from the Services developed by LivePepper, which will be accessible in SaaS mode and which are governed by these Terms and Conditions (hereinafter, the '**Contract**').

You declare that You have read and accept the rights and obligations relating to the Services. The use and purchase of the Services are governed by this Contract.

### I. PURPOSE

You confirm that You have checked to ensure that the Service is suited to your requirements and that LivePepper has provided You with all the information and advice You required in order to enter into this Contract in full knowledge of the facts.

This Contract sets out the technical and financial terms and conditions of our respective commitments.

These general terms and conditions apply, to the exclusion of all other terms and conditions, particularly those applied by You, to all orders placed by You for services to be provided by Us.

### II. SERVICES

## **II. 1) Order execution**

The Service will be made available within the timeframe specified on the order, depending on the nature of the services, once You have effectively paid for the order.

Payment will be effective once the price of the Service has been credited to Our account.

## **II. 2) Collaboration**

You agree to be responsive and to effectively collaborate with Us in the performance of the Contract. Accordingly, You agree in particular to:

- allocate and maintain for the required duration the necessary resources in terms of skills and staff members in order to implement the Services;
- use your best efforts to ensure that all Data used in connection with the Services remains secure;
- protect your information system; and
- provide Us with appropriate information that will enable Us to provide the Services to You in accordance with this Contract. We will not be liable for any loss, damage, non-conformity or defect resulting from information or documents not provided by You or that are incomplete or inaccurate.

## **II. 3) Resources**

You agree to allocate and maintain in all circumstances, for the required timeframe, the hardware, software and human resources required in terms of capacity, expertise and number, in order to implement and use the Services. You are solely responsible for the means and resources used to access the Services.

## **II. 4) Independence**

The Parties agree that no provision of this Contract should be construed as constituting an agency arrangement, a joint-venture, a *de facto* company, a partnership or any other form of grouping, joint undertaking or business alliance.

Each Party shall remain completely independent, shall manage its affairs as it sees fit, shall be liable for all of its actions and shall be solely liable for all risks associated with its business.

## **II. 5) Outsourcing**

In the context of this Contract, We reserve the right to outsource some or all of the Services to any service provider of Our choosing, which You accept.

## **II. 6) Intellectual property**

We shall remain the exclusive owners of the copyright, software, files, know-how and information belonging to Us and that are developed or acquired prior to the effective date or outside the scope of this Contract.

## **III. ACCESSING AND USING THE SERVICES**

### **III. 1) Logins and passwords**

You can log in to the Services by entering a login and password, for which You are solely responsible.

Logins are intended to ensure that the Services can only be accessed by You and your customers who use the Services (hereinafter, '**End Clients**'), and to protect the integrity and availability of the Services as well as the integrity, availability and confidentiality of your Data and the Data of End Clients.

Logins are personal and confidential. You agree to implement a password management policy according to which passwords must be created and changed at least in accordance with industry standards; in other words, they must be complex and contain more than 8 characters, they must be regularly updated and they must be kept strictly confidential to protect access to the Services.

You must therefore take such measures as are necessary to ensure that only End Clients who hold an account can access and use the Services. You must promptly inform LivePepper in writing of any unauthorised access to, or use of, the Services. We will not be liable under any circumstances for the unauthorised or fraudulent use of the logins of Clients or End Clients.

### **III. 2) Using the Services**

The Services are accessible online, using a browser that is to be installed and used under your sole responsibility. Indeed, You are responsible for your use of the Internet and expressly acknowledge that no technology is entirely secure.

You agree in particular:

- to use the Services solely for your own benefit and to comply with this Contract;
- to act responsibly and, in particular, not to sell, resell, grant access or subsequent access, distribute, make available, hire out or lease some or all of the Services;
- to comply with all legal and regulatory requirements in force, particularly the rights of third parties;

- not to use any text, photograph or other element liable to be protected by copyright, a trade mark or individual rights; and
- to act according to the purpose of the Services; not to adversely affect the integrity, the performance or, generally, the quality of the Services; in this respect, You agree in particular not to download any element that contains a software virus or other computer code, file or program designed to disrupt, destroy or limit the functionality of some or all of the Services.

We may, at our discretion, immediately suspend the Services provided to You in the event that You (or one or more End Clients) fail to comply with some or all of the above provisions or use the Services other than in accordance with this Contract, if We believe that the foregoing poses a threat to the security, integrity, availability or quality of the Services We provide.

## **IV. FINANCIAL TERMS**

### **IV. 1) Prices**

The prices applicable for the various services offered by LivePepper are available online, on our website, and can be obtained by writing to Us at [contact@livepepper.fr](mailto:contact@livepepper.fr).

The Services ordered must be specified on the purchase order. Unless specified to the contrary, prices include VAT and are payable in euros.

We reserve the right to change our prices at any time, on the condition that We give You one month's notice by e-mail of any new VAT-exclusive prices that are less favourable to You. You will be deemed to have accepted the new prices if your order is not cancelled within one month. Price changes will apply to all contracts, particularly those in progress at the relevant time.

### **IV. 2) Payment**

The services provided by Us must be paid for when the order is placed. Payment must be made online by bankcard when the order is placed or on a monthly basis for subscriptions.

You may pay by cheque providing that the cheque is issued by a bank in French Territory (due to the high bank charges imposed on Us).

Lastly, You may opt to set up a direct debit at any time, by sending Us a bank account identification slip (RIB) along with a direct debit mandate. The above bank restrictions also apply. You must ensure at all times that there are sufficient funds on the account that is to be debited: You will be liable for a fixed charge of €25 (excluding VAT) if a direct debit is rejected.

You must choose a method of payment that is appropriate in view of the service ordered and the period of time for which the service is to be provided.

## **V. DURATION AND RENEWAL OF SERVICES**

### **V. 1) Duration**

The Service will be provided for the period of time specified on the order.

If the Service is not renewed, it will be suspended on the applicable expiry date. You may however reactivate the Service within seven (7) days of the expiry date by paying Us the applicable fee. If no effective payment is made within this timeframe, your account will be deleted and your data will be destroyed.

### **V. 2) Renewal of Services**

If You opt to pay by direct debit, the Service(s) will be tacitly renewed from one month to the next unless You cancel the Service(s) at least 15 days before your Contract expiry date.

If You opt to pay by another method of payment, We will send an e-mail to your billing contact (You are responsible for ensuring that We have their correct e-mail address at all times) before the expiry date, asking them to pay the applicable price in order to renew the Service. We agree to send at least three e-mail reminders before the Service is due to expire.

Any payment default or payment not made in the required form – including, for example, an incorrect or incomplete payment, a payment that does not include the required references or a payment made using means or a procedure not accepted by Us – will be ignored and We will reject the registration or renewal request.

If a renewal fee is paid by cheque, You must request the renewal sufficiently in advance so that the cheque is effectively received by Us before the Service is due to expire.

We will not be liable should a Service not be renewed due to your payment not being honoured or rectified.

### **V. 3) Cancellation, limitation and suspension of the Service**

This Contract will automatically end on the applicable expiry date. It may be renewed subject to payment of the applicable fee, in accordance with clause 5.

Should You wish to cancel before the Contract expiry date, You may terminate this Contract by e-mail ([contact@livepepper.com](mailto:contact@livepepper.com)), in which case You will not be entitled to a refund of the sums already paid.

In any other circumstance in which either Party fails to fulfil any of its obligations under this Contract and fails to cure the breach within seven (7) days of an e-mail sent by the non-defaulting Party containing information on the breach at issue or any other authentic form

of notice sent by the said Party, this Contract will be automatically terminated, without prejudice to any damages that might be claimed from the defaulting Party. The date of service of the notice containing information on the breach at issue will be the date of the postmark upon the first attempted delivery of the letter.

We reserve the right, should the need arise, to interrupt the Service in order to work on it, either in order to improve its performance or for maintenance purposes.

#### **V. 4) Right of withdrawal**

In accordance with Article L121-20-2 of the *Code de la consommation* (French Consumer Code), You expressly acknowledge that this Contract shall take effect upon confirmation of an order and/or a subscription.

As a result, the right of withdrawal does not apply to Services ordered on the [www.livepepper.fr](http://www.livepepper.fr) website, as the Services provided on the website will commence as soon as an order has been placed.

## **VI. PROCESSING OF PERSONAL DATA**

### **VI. 1) Your personal data**

Each Party agrees to comply with data protection regulations, in particular the *Loi relative à l'informatique, aux fichiers et aux libertés* (French Data Protection Act) No 78-17 of 6 January 1978 and all applicable European regulations, including in particular Regulation (EU) No 2016/679 of the European Parliament and of the Council (the '**General Data Protection Regulation**') and all the recommendations, decisions and other standards imposed by the *Commission Nationale de l'informatique et Libertés* (French Data Protection Authority) (the '**Data Protection Regulations**')

In connection with the Services, We will collect your Personal Data through forms. If You do not wish to provide the requested information, We will not be able to provide the Services. We agree only to collect the Personal Data strictly necessary in order to provide the Services and thus perform these Terms and Conditions.

The Personal Data We collect will be electronically processed for LivePepper's benefit and is required in order to register, process and monitor the Services. The Personal Data We collect will be processed in accordance with the French Data Protection Act of 6 January 1978 and General Data Protection Regulation No 2016/679 of 27 April 2016, which came into force on 25 May 2018.

The Personal Data We collect will be erased three (3) years after our business relationship has ended. We may store some Personal Data in order to fulfil our statutory or regulatory obligations. This Personal Data will be erased when there is no longer any reason to retain it.

In accordance with applicable legislation, You have a right of access, a right of rectification and a right of erasure in relation to your Personal Data. You also have the right to object to the processing of your Personal Data – providing You have a legitimate reason for doing so – if the data is not required to fulfil an Order and these Terms and Conditions, as well as a right to portability of your Personal Data.

All Personal Data is stored within the European Union. We will inform You of any incident involving your Personal Data.

Any Client who can prove their identity may exercise their rights of access, modification, erasure and portability of their Personal Data by contacting Us at: [contact@livepepper.com](mailto:contact@livepepper.com).

You warrant that, in connection with the Services, You will not process any sensitive data (as defined by law) and that You alone will determine the purposes and means of the processing of personal Data.

## **VI. 2) Personal data of End Clients**

We hereby inform You that the personal data of End Clients collected in connection with the Services will be recorded and stored on the servers of OVH, our processor. Documents concerning the hosting services provided by OVH are accessible at: [www.ovh.com](http://www.ovh.com).

End Clients also have a right of access, a right of rectification, a right of modification, a right of erasure and a right to portability of their data. You must comply with all regulations applicable to the administration and fulfilment of the rights of End Clients.

Unless an End Client raises a specific objection, the data of End Clients will be retained for so long as the Services are provided and for three (3) years after the End Client's last login.

You are hereby informed that your data and the data of your End Clients must be processed in order to perform and fulfil your contractual obligations in relation to the Services proposed by LivePepper.

We have implemented security and confidentiality measures to protect the data of End Clients. We are therefore able to view the personal data that is downloaded and stored by You solely in connection with the Services. You remain the data controller and must therefore ensure that appropriate technical and organisational measures are implemented to manage data as required by law.

## **VII. GENERAL PROVISIONS**

### **VII. 1) Economic balance of the Contract**

In the event that one or more events beyond the control of the Party that suffers the burden of an imbalance occurs and affects the terms of performance of this Contract, by significantly increasing the cost of some or all of the Services (hereinafter, a 'Change to the Balance of the

Contract'), the Parties shall meet in order to jointly adjust, in good faith, the financial and/or technical terms of the Contract in order to fairly reflect the actual effect of the events on the Contract.

In the absence of agreement concerning these new terms, the Party that suffers the burden of the imbalance may automatically terminate the whole or part of the Contract without being required to pay a penalty or other financial compensation. The Contract will terminate within three (3) months of the date of posting by the terminating Party of a letter sent recorded delivery (signed for) informing the other Party of its wish to terminate the whole or part of this Contract due to a Change to the Balance of the Contract.

#### **VII. 2) Modification**

The general and special terms and conditions posted online shall prevail over any printed general and/or special terms and conditions. The Parties agree that We may automatically change the Service We provide without being required to complete any formality other than to inform You accordingly by posting a notice online and/or incorporating our changes in the Contract. We will post a notice on our website concerning any modification or the introduction of new subscription options.

You may terminate this Contract within thirty (30) days of the effective date of such changes.

#### **VII. 3) No waiver**

No forbearance by either Party, on one or more occasions, in relying on one or more provisions of this Contract should be construed as a waiver by that Party of the right to rely on the provisions of this Contract in the future.

#### **VII. 4) Transmission of the Contract**

You are not permitted to assign or transfer this Contract, in whole or in part, for valuable consideration or free of charge, without our prior written consent, such consent not to be unreasonably withheld. We may assign or transfer the Contract, in whole or in part, on any grounds and in any form whatsoever, to any third party.

### **VIII. LIABILITY**

#### **VIII. 1) Liability of LivePepper**

In connection with the performance of this Contract, it is expressly agreed that We are bound by a best endeavours obligation (*obligation de moyens*).

We will not be liable on any grounds whatsoever other than for a direct loss or damage suffered by You due to a breach of contract attributable exclusively to LivePepper and established by You.

The Services must be used under your exclusive management, supervision and responsibility. You agree to stand surety to ensure that the remainder of the Contract is performed by End Clients. We will use our best efforts to implement reasonable technical and organisational measures to secure the personal data processed in connection with the Services in accordance with data protection law and, generally, to ensure that the data processed in connection with the Services remains secure.

### **VIII. 2) Liability exemption**

We will not be liable for any indirect loss such as a loss of clientele, a loss of turnover or any of the following:

- a fault affecting a telecommunications operator, particularly a fault with your GSM or Wi-Fi network;
- abnormal or non-compliant use of the Services by You or an End Client, any fault, negligence, omission or default attributable to You, or any failure to follow the advice given;
- any use made of the Services for unlawful purposes;
- a defect affecting your information system;
- any service provided for You by a third party or sub-contractor;
- the unlawful disclosure or use of the password provided confidentially to You;
- any fault, negligence or omission by a third party over whom We have no power of control or supervisory authority;
- a request to temporarily or permanently interrupt the Service made by a competent administrative or judicial authority, or a notice given to a third party within the meaning of Article 6 of the LCEN (French Act for Trust in the Digital Economy); or
- the destruction of some or all of the information transmitted or stored following errors attributable directly or indirectly to You.

Lastly, We will not be liable for the non-fulfilment or delayed fulfilment of any obligation arising under this Contract due to a *force majeure* event or any event beyond our control.

The Parties agree that, in any event, our liability for any and all losses suffered, regardless of the cause, triggering event, order and End Client, shall be limited to 50% of the total amount of invoices paid by You during the year prior to the year of occurrence of the first triggering event or during the year in progress if the latter is the first billing year.

The Parties acknowledge that the prices agreed reflect the allocation of risk and the subsequent limitation of liability. They also acknowledge that the maximum amount negotiated and accepted by them in accordance with this clause is not inadequate and does not contradict the scope of the fundamental obligation assumed by LivePepper.

### **VIII. 3) Warranties**

You give the following warranties:

- (i) You hold all the rights and permissions necessary to enable Us to fulfil our obligations under this Contract, particularly in relation to Data; and
- (ii) You agree to hold LivePepper harmless from and against any proceedings, action or claim issued or made by any End Client or third party in relation with the performance of this Contract, particularly owing to the Data used in connection with the Services.

We give no warranty, whether express, implicit, legal or otherwise, and exclude all implicit warranties, including warranties as to the merchantable quality or suitability of the Services for a specific purpose, within the limits permitted by applicable law.

Without limiting the general nature of the above provisions, We make no representation and give no warranty that the Services will fulfil your specific requirements or that the use thereof will be uninterrupted, diligent, secure or exempt from errors.

### **VIII. 4) Force majeure**

In the event of *force majeure* or any other unforeseeable cause beyond the control of either Party and that is liable to prevent the relevant Party from fulfilling its contractual obligations, the affected Party must promptly inform the other Party accordingly by any means, with confirmation to be sent recorded delivery (signed for). The Parties' obligations will be suspended for the duration of the *force majeure* event and the Parties shall use their best efforts to limit the duration and effects of the *force majeure* event.

However, in the event that the obligations arising under this Contract are suspended for a period of more than one (1) month, either Party may automatically terminate the Contract by letter sent recorded delivery (signed for). In such event, the Contract will terminate fifteen (15) days after receipt of the said letter.

## **IX. PUBLICITY**

Unless notice is given to the contrary, You grant LivePepper a non-exclusive and restricted right to use your business names, company names, trade marks, logos, domain names and other distinguishing signs – which may or may not be registered – in any and all

presentations, marketing documents, client lists and financial reports produced by LivePepper or on our behalf.

## **X. CONFIDENTIALITY**

Throughout the term of this Contract and for five (5) years after the Contract has ended, each Party agrees to keep all Confidential Information confidential and not to disclose or make such information available to third parties – other than any accountant, lawyer or other third party who has a need to know to ensure the smooth running of LivePepper's business – without the prior written consent of the other Party, unless an order is made by a court or any other administrative authority.

The Parties will not be bound by the above confidentiality obligation if, on the date of disclosure of the confidential information concerned, the said information has already entered the public domain or if the confidential information concerned was developed or independently obtained by the other Party without any breach of the above confidentiality obligation, or if the information was legally accessible to third parties who are not bound by a confidentiality obligation.

## **XI. AMICABLE RESOLUTION**

In the event of a dispute, disagreement or claim arising out of or in relation to this Contract (including any dispute concerning the validity, interpretation, breach or termination of the Contract) (hereinafter, a 'Dispute'), the Parties shall endeavour to amicably resolve the Dispute before referring it to the court named in the clause entitled 'Governing law and jurisdiction'.

First, one of the Parties shall send the other Party a request to hold a conciliation meeting by letter sent recorded delivery (signed for) (hereinafter, the 'Conciliation Notice'). If an agreement is reached within thirty (30) days of receipt of the Conciliation Notice, the agreement must be set out in writing and signed by the Parties. Such written signed agreement will be deemed a supplemental agreement to this Contract.

If an amicable solution is not found within thirty (30) days of receipt of the Conciliation Notice, the Parties shall regain the freedom to take legal action.

## **XII. GOVERNING LAW AND JURISDICTION**

This Contract is governed by French law.

The Parties shall endeavour to amicably resolve any dispute that arises in connection with this Contract, including in particular its validity, performance or interpretation, in accordance with the 'Amicable resolution' clause above. In the absence of amicable resolution within the timeframe stipulated in the said clause, express jurisdiction is granted to the *Tribunal de Commerce* (Commercial Court) of Grasse (unless exclusive jurisdiction is granted to a

different court), even if there is more than one defendant or if a third party is joined to the proceedings, including for urgent or protective proceedings brought on an interlocutory or *ex parte* basis.