

TERMS OF USE “SIZEBUDDY”

These are the SaaS Terms of Use (the “**Terms**”) applicable to the use of ‘SizeBuddy’, a software solution tool offered as a service by SizeBuddy VOF, having its office at Tolsteegplantsoen 52-3 (3523 AP) in Utrecht, The Netherlands, and registered with the Dutch Chamber of Commerce under number 86439278, and in these Terms hereafter referred to as “**SizeBuddy**”.

These Terms can also be viewed and downloaded from the website at <<https://www.sizebuddy.nl>> or may be sent to you upon request.

1. DEFINITIONS

- 1.1 In these Terms, words written with capitals and not defined elsewhere will have the following meaning:
- 1.1.1 **Affiliate(s)**: means an entity that (directly or indirectly) controls, is controlled by, or is under common control with the relevant entity, such as but not limited to executive officers, directors, large stockholders, subsidiaries, parent entities and/or sister companies;
 - 1.1.2 **Business Day**: means any weekday (Monday to Friday), other than a bank holiday or public holiday in the Netherlands;
 - 1.1.3 **Business Hours**: means the hours of 09:00 to 17:00 CET on a Business Day;
 - 1.1.4 **Client**: means the legal person or natural person acting in the exercise of a business or profession, that is interested in the Tool and/or has entered into a Subscription with Tool;
 - 1.1.5 **Client Data**: means all data, works and materials uploaded or transmitted to the Tool by the Client or generated as a result of the use of the Tool by the Client, thereby including the Client’s end-customers, and excluding analytics data relating to the use of the Tool and server log files;
 - 1.1.6 **Credentials**: means the token, username or other credentials required for the Client to integrate and use the Tool in connection with the Client’s own website.
 - 1.1.7 **Documentation**: means the technical content that documents the Tool, thereby including the instructions on how to effectively use and integrate the Tool.
 - 1.1.8 **Force Majeure**: means an event, or a series of related events, that is outside the reasonable control of SizeBuddy, in any event including but not limited to: i) failures of the Internet or any public telecommunications network, failures of cloud providers, electricity failures; ii) hacker attacks, denial of service attacks, virus or other malicious software attacks or infections; iii) war, disasters, explosions, fires, floods, riots and terrorist attacks; iv) governmental measures or boycotts; v) strike actions and vi) pandemics;
 - 1.1.9 **GDPR**: means the General Data Protection Regulation (Regulation (EU) 2016/679);
 - 1.1.10 **Intellectual Property**: means any and all intellectual property rights, whether registered or unregistered, such as but not limited to patent rights, copyrights (including rights in source code and object code), database rights, rights in designs, utility models, trademarks, trade and business names and all associated goodwill, rights in or in connection with know-how and trade secrets;
 - 1.1.11 **Subscription**: means the Subscription type for the Tool by a Client after acceptance of a Subscription Request by SizeBuddy.
 - 1.1.12 **Subscription Request**: means the subscription request by a Client for the Tool through the website of SizeBuddy.
 - 1.1.13 **Support**: means support in relation to the use of, and the identification and resolution of errors in the Tool, but not including the provision of consultancy services;
 - 1.1.14 **Tool**: means the software solution tool known under the name ‘SizeBuddy’ and provided by SizeBuddy to the Client ‘*as a service*’ in accordance with these Terms;
- 1.2 Unless the context shows otherwise, the defined concepts in the singular include also the plural and vice versa.
- 1.3 Any reference to the words ‘written’ or ‘in writing’ will mean to include emails.

2. GENERAL

- 2.1 These Terms apply to all offers and quotes of, or agreements with SizeBuddy, as well as to the provision, use and availability of the Tool by SizeBuddy to the Client. By submitting a Subscription Request, through the website or

via email, or accepting an offer, the Client agrees with and accepts the applicability of these Terms. These Terms and any Subscription Request accepted by SizeBuddy (including any conditions applicable to such acceptance) will constitute the entire agreement between SizeBuddy and the Client with regard to the use of and access to the Tool and replace all previous oral or written agreements between the Client and SizeBuddy (to the extent applicable).

- 2.2 The applicability of any purchase terms or any other general conditions of the Client are explicitly rejected. Additions to or deviations from these Terms shall only apply if and where agreed in writing between SizeBuddy and the Client.
- 2.3 If any provision in these Terms is held invalid or otherwise unenforceable, the enforceability of the remaining provisions of these Terms will not be impaired thereby. In such event, SizeBuddy will replace the invalid provision with a provision that is valid and enforceable thereby taking into account the intention of the original provision.
- 2.4 SizeBuddy is entitled to unilaterally amend the Terms at any time, after which the Terms shall apply in the amended form to any and all subsequent offers, quotes or subscriptions, or any subsequent activities in connection with the Tool, and/or any other legal relationships subsequently arising. In the event the Client does not wish to accept the amended version of the Terms, the Client should immediately inform SizeBuddy of its objections in writing, whereby the Client may continue its Subscription for the remainder of the Subscription term under the last applicable version of the Terms. Any renewal (automatically or expressly) of the Subscription after termination of the applicable Subscription term will then be subject to the amended version of the Terms.
- 2.5 These Terms have also been drawn up for the benefit of: (a) all companies which SizeBuddy is affiliated with in a group, has or has had a management or cooperation agreement with including their directors and shareholders; (b) all directors, (former) employees and third parties (as well as their heirs) who work/have worked in any way for or were affiliated with or employed by SizeBuddy; and (c) all third parties SizeBuddy may engage in connection with the provision of the Tool. The Terms apply as a third-party clause as referred to in Book 6, Section 253 of the Dutch Civil Code for the benefit of all persons and legal entities referred to in this clause. As a result they are entitled to invoke the respective provisions in these Terms as the occasion arises.

3. SUBSCRIPTION AND CREDENTIALS

- 3.1 After SizeBuddy has accepted a Subscription Request from the Client, SizeBuddy will provide the Credentials necessary to enable the Client to integrate and use the Tool in the Client's website. A Subscription Request may at all times be rejected to the sole discretion of SizeBuddy.
- 3.2 Any (delivery) dates or timelines specified by SizeBuddy shall be established to the best of SizeBuddy's knowledge on the basis of the information available to it at the time. Any such (delivery) dates or timelines shall in all cases be target dates and shall not bind SizeBuddy in any way.
- 3.3 The Client will be independently responsible for complying with the Documentation and warrants that it has sufficient knowledge and experience in how to implement and use a software tool within its website.
- 3.4 The Client will be independently responsible for complying with or having installed the minimum (auxiliary) software or system/browser requirements in order to achieve the interoperability with the Tool. SizeBuddy does not warrant or represent that the Tool will be compatible with any other software or systems/browser, unless explicitly indicated otherwise.
- 3.5 The Client agrees not to disclose the Credentials to any third party and shall notify SizeBuddy immediately upon becoming aware of any breach of security or unauthorized use of its Credentials. The Client is fully responsible for all activities that occur under its account and/or any actions occurring with the use of the Client's Credentials. The Client is solely responsible for keeping the Credentials secret and secure. SizeBuddy cannot and will not be held liable for any loss or damages resulting from the Client's failure to maintain the secrecy or security of its Credentials.
- 3.6 The Client - thereby explicitly including its Affiliates - is only entitled to use the Tool for its own website(s). SizeBuddy is and remains entitled to limit or refuse the addition of websites.

4. FEES AND PAYMENT

- 4.1 The Client will pay the fee(s) applicable to the Subscription subscribed for and any other applicable charges invoiced ("Fees").

- 4.2 All Fees are exclusive of value added tax (VAT) and other levies imposed or to be imposed by the government, unless explicitly indicated otherwise by SizeBuddy. All Fees are in euros and must be paid in euros, unless explicitly indicated otherwise by SizeBuddy.
- 4.3 Fees are paid on a monthly basis, in arrears. For the Fees due the Client will receive an invoice. Invoices of SizeBuddy are due and payable within fourteen (14) days after the invoice date. The Client shall never be entitled to suspend any payment or to set off amounts due.
- 4.4 With regard to the Fees due by the Client, the relevant documents and data from SizeBuddy's administration or systems provide full evidence, without prejudice to the Client's right to provide evidence to the contrary.
- 4.5 If the Client fails to (timely) pay the Fees due, the Client will incur statutory commercial interest on the outstanding amount, without any demand or notice of default being required. If the Client continues to fail to pay the amount due after receipt of the demand or notice of default, SizeBuddy may assign the claim, in which case the Client, in addition to the total amount due at that time, will also be obliged to pay all judicial and extrajudicial costs, including all (legal) costs of third parties.
- 4.6 If the Client fails to (timely) pay the Fees due, SizeBuddy also has the right to suspend or limit the Client's access to the Tool until the outstanding Fees have been fully made or proper security has been provided.

5. USE OF THE TOOL

- 5.1 Subject to the Client's payment and compliance with these Terms, SizeBuddy grants the Client with a limited, personal, revocable, non-exclusive, non-transferable and non-sublicensable license to access and use the Tool for a limited term under the Subscription.
- 5.2 The Client furthermore warrants and guarantees:
 - 5.2.1 not to use the Tool for other purposes than its internal business use;
 - 5.2.2 not to use the Tool (or part thereof) for any illegal, fraudulent or unauthorized purpose;
 - 5.2.3 not to engage in any activity that causes, or may cause, damage to the Tool or impairment of the availability or accessibility of the Tool;
 - 5.2.4 to comply with applicable laws and regulations (such as but not limited to data protection law) within its jurisdiction;
 - 5.2.5 not to sublicense, lease, (re)sell, rent, transfer, distribute, copy, modify, decompile or reverse engineer the Tool (or part thereof);
 - 5.2.6 not to conduct or request that any other person or party conduct any load testing or penetration testing on the Tool;
 - 5.2.7 not to infringe upon or violate SizeBuddy's Intellectual Property or the Intellectual Property of third parties;
 - 5.2.8 not to upload or transmit viruses or any other type of malicious or destructive code;
 - 5.2.9 not to spam, phishing, pharm, pretext, spider, crawl, or scrape;
 - 5.2.10 not to upload or transmit Client Data that is discriminatory, illegal, in breach of applicable law or regulations, or violates third party rights, such as but not limited to Intellectual Property or privacy rights;
 - 5.2.11 not to remove or alter any proprietary notices or labels in the Tool;
 - 5.2.12 not to interfere with or circumvent the security features of the Tool (or part thereof).
- 5.3 The Client acknowledges and accepts that SizeBuddy retains the right to remove any information or content that is deemed - to SizeBuddy's sole discretion - in violation of these Terms, and in particular the warranties and prohibited uses as stipulated under clause 5.2, SizeBuddy also has the right to immediately terminate the Client's access to and use of the Tool in the event of such violation.
- 5.4 SizeBuddy reserves the right to modify (including but not limited to adding or removing features), discontinue or terminate the Tool or any part thereof, for any reason without notice and at any time. SizeBuddy cannot be held liable for damages or loss of the Client or any third party as a consequence of any such modification, discontinuance or termination.
- 5.5 Unless agreed otherwise in writing, the Client is responsible for the management, including control of the settings, the use of the Tool - also by end-users - and the way in which the results and insights of the Tool will be interpreted and used. The Client is also responsible for the instruction to and use by end-users, regardless of whether these end-users are in an authority relationship towards the Client.

5.6 SizeBuddy may suspend the Client's access to and use of the Tool without prior notice if SizeBuddy reasonably believes that the Client is acting in violation of the Terms. SizeBuddy reserves the right to immediately terminate or suspend the Client's access to the Tool and to revoke the Credentials, also without prior notice, if the Client has violated or violates any provision under these Terms. SizeBuddy will not be held liable for damage or refund claims of the Client as a result of any such suspension or termination.

6. WARRANTIES AND SUPPORT

6.1 Although SizeBuddy undertakes to provide and maintain the Tool with the most reasonable care, the accuracy and completeness of the functionalities within the Tool cannot be guaranteed. The Tool is provided 'AS IS' and 'AS AVAILABLE'. SizeBuddy does not guarantee that the Tool shall at all times function without error or interruption, nor that it will be wholly free from defects, errors and bugs.

6.2 The Client acknowledges and accepts that the predictions and outcomes provided by or resulting from the use of the Tool are not guaranteed to be correct at all times. The Client also acknowledges and accepts that these predictions and outcomes rely on the correctness of the input provided by the Client or its end-customers. The Client agrees to indemnify and hold SizeBuddy harmless from and against any claim, demand, damages or costs (including attorneys' fees) that arise or may arise out of the use of the Tool, the incompleteness or incorrectness of a prediction or outcome, and thereby including the return of a product by the end-customer also if such return is the result of the use of the Tool.

6.3 Where appropriate for the proper performance of Support or additional services, SizeBuddy reserves the right to engage Affiliates or third parties to carry out (part of) the Support or other services, such at the sole discretion of SizeBuddy. In this respect, the applicability of articles 7:404, 7:407 paragraph 2, and 7:409 Dutch Civil Code is expressly excluded.

6.4 SizeBuddy will use reasonable efforts to make the Tool available 24 hours a day, 7 days a week, except during planned or unplanned downtime. SizeBuddy will use reasonable efforts to inform the Client of the downtime in advance, if and when possible. For the avoidance of doubt, downtime caused directly or indirectly by (i) Force Majeure, (ii) failure of the Client's computer systems or networks, (iii) any breach by the Client of these Terms, (iv) any scheduled maintenance in accordance with these Terms or service level agreement (if applicable) or (v) maintenance, downtime or issues at the cloud provider where the Tool runs, shall not be considered a breach of these Terms.

6.5 SizeBuddy may at any time (temporarily) suspend or limit the use or availability of the Tool or part thereof, insofar this is necessary to execute maintenance or implement updates, upgrades or new releases of the Tool or functionalities. SizeBuddy undertakes reasonable efforts to inform the Client of such suspensions in advance, if and when possible. A (temporary) suspension or limitation of the Tool or part thereof shall never create any claim or right to compensation or refund(s) of the Fee(s) for the Client against SizeBuddy.

6.6 SizeBuddy will handle substantiated requests for Support within a reasonable period of time depending on severity and impact. SizeBuddy cannot guarantee the accuracy, completeness or timeliness of responses in connection with the Support provided. Unless agreed otherwise in writing, Support will only be provided on Business Days during Business Hours.

6.7 The Tool is available for use by the Client for the period as indicated by SizeBuddy. However, SizeBuddy reserves the right to modify, discontinue or terminate, temporarily or permanently, the Tool or any part thereof, for any reason and at any time. SizeBuddy cannot be held liable for damages or loss of the Client or any third party as a consequence of any such modification, discontinuance or termination.

6.8 For the purpose of maintaining the Tool and providing Support or additional services, SizeBuddy may have access to personal data -within the meaning of the GDPR- of the Client, its employees and/or end-customers of the Client. Where SizeBuddy processes such personal data on behalf of the Client, SizeBuddy qualifies as the 'Processor' and the Client as the 'Controller'.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in and related to the Tool shall exclusively vest in SizeBuddy or its licensors. The Client only acquires those rights of use that are explicitly granted in and in accordance with these Terms.

7.2 The Client is prohibited from removing or amending any indications or credits of Intellectual Property or confidentiality from the Tool, websites, data files, Documentation or materials as disclosed by SizeBuddy.

7.3 The Client acknowledges and accepts that SizeBuddy is permitted to use the Client's, name logo and use-case for marketing purposes.

8. TERM AND TERMINATION

8.1 Unless indicated otherwise by SizeBuddy, a Subscription concerns a monthly subscription, that can be terminated for convenience by both the Client or SizeBuddy in writing with due observance of a notice period of at least one (1) full calendar month.

8.2 SizeBuddy has the right to terminate a Subscription with the Client with immediate effect and without incurring any liability, by providing notice to the Client, in the event:

8.2.1 the Client has been declared bankrupt, or files for bankruptcy;

8.2.2 the Client is granted a (provisional) suspension of payment or requests a suspension of payment;

8.2.3 the Client is or becomes unable to pay its Fees or other debts as they fall due;

8.2.4 the Client ceases all (or substantially all of) its business operations.

8.3 Upon the termination of a Subscription, regardless of the reason thereof, the right of the Client to use the Tool immediately ceases and the Credentials may be revoked. Unless otherwise provided for in these Terms, the Client will not be entitled to any refunds of any Fees, pro rata or otherwise, and any outstanding Fees on the effective date of such termination will become immediately due and payable in full.

9. LIMITATION OF LIABILITIES

9.1 The total aggregate liability of SizeBuddy due to an attributable failure or due to any other legal reason whatsoever, shall be limited to the compensation of direct damages only and not exceeding the sum of the total Fees (excl. VAT) received by SizeBuddy from the Client in the two (2) months prior to occurrence of the damage. SizeBuddy's liability will furthermore under all circumstances be limited to the amount actually paid out by the liability insurance as a result of the claim in question.

9.2 SizeBuddy's liability for indirect loss or damage, including but not limited to consequential loss or damage, loss of profit, loss of revenues, missed savings, reduced goodwill, loss or damage due to business stagnation or interruption, loss or damage as a result of claims by the Client's end-customers, loss or damage in connection with the use of the Tool and materials or software of third parties, is expressly excluded. Also SizeBuddy's liability for the damage, destruction or loss of data, or for the (temporary) unavailability of the Tool, is excluded.

9.3 The exclusions and restrictions referred to in clause 9.1 to 9.2 will not apply if and in so far as the damage or loss are the result of an intentional act or gross recklessness by SizeBuddy.

9.4 SizeBuddy shall never be liable for any damages and costs incurred by the Client or any third party which are the result of Force Majeure.

9.5 Except where performance by SizeBuddy is permanently impossible, SizeBuddy will only be in default for an attributable failure after it has been given written notice of the default thereby granting SizeBuddy with a reasonable term of at least fourteen (14) Business Days to remedy the default. The notice of default must contain a comprehensive and detailed description of the breach, in order to ensure that the SizeBuddy has the opportunity to respond adequately.

9.6 A condition for the filing of any claim to damages is always that the Client reports the damage to SizeBuddy in writing as soon as possible and in any event not later than 10 (ten) days after the damage occurred. Claims for damages against SizeBuddy shall in any event lapse by the mere expiry of six (6) months after the damage occurred, unless Client has filed its statement of claim for such damages with the applicable court before the last day of that six (6) months period.

9.7 The Client shall indemnify and hold harmless SizeBuddy from and against any and all claims, damages, losses or costs (including legal /attorney costs) of the Client or third parties arising from or in any way related to the use of the Tool, including but not limited to:

9.7.1 the improper use of the Tool or a violation of these Terms by an end-user within the Client's organization;

9.7.2 the improper use of the Tool by an end-customer of the Client;

9.7.3 a violation of any law, regulations or third party rights by an end-user within the Client's organization.

10. APPLICABLE LAW AND DISPUTES

- 10.1 These Terms shall be exclusively governed by the laws of The Netherlands. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is explicitly excluded.
- 10.2 To the extent legally permitted, any disputes that may arise between SizeBuddy and the Client arising from or in connection with these Terms, and cannot be settled amicably, shall be exclusively brought before the competent court within the district Midden-Nederland, The Netherlands.

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