

SHOPSHAPE Software as a Service (SaaS)
Terms and Conditions for provision of SaaS solution

These Terms and Conditions apply to any offer from Provider, order from Customer and agreement between Customer and Provider relating to the provision of the Service by Provider.

1. Definitions

Definitions in these Terms and Conditions, whether in singular or plural form, starting with a capital letter shall have the meaning as set out in this clause:

- 1.1. Agreement: every agreement between Customer and Provider that relates to the provision of the Service by Provider. These Terms and Conditions, the Service Level Agreement and any other documents referred to in these Terms and Conditions form an integral part of such Agreement.
- 1.2. Confidential Information: means any and all information and material of a Party (the “Disclosing Party”) which has or shall come into the possession, control or knowledge of the other Party (the “Recipient Party”) in connection with or as a result of entering into the Agreement, including information concerning the Disclosing Party’s past, present and future customers, suppliers, technology, and business. For the purposes of this definition, “information” and “material” includes, without limitation, know-how, data, patents, copyrights, trade secrets, processes, techniques, programs, designs, formulae, marketing, advertising, financial, commercial, sales or programming materials, written materials, compositions, drawings, diagrams, computer programs, studies, work in progress, visual demonstrations, ideas, concepts, business, financial and operational information and other data, in oral, written, graphic, electronic, or any other form or medium whatsoever.
- 1.3. Contact: a Party designated contact.
- 1.4. Customer Data: all works and materials uploaded to, stored on, processed using or transmitted via the Service by or on behalf of the Customer or by any person or application or automated system using the Customer’s account; and otherwise provided by the Customer to the Provider in connection with the Agreement;
- 1.5. Effective Date: the date the Offer has been concluded in accordance with clause 2 of the Terms and Conditions.
- 1.6. Manual: means the documentation produced by the Provider and made available to the Customer specifying how the Service should be used, as may be amended by Provider from time to time;
- 1.7. Offer: the offer provided by Provider to Customer, which, inter alia, includes a description of the Service and the commercial terms for the provision of the Service (such as the price and the number of Users). The Offer forms an integral part of the Agreement.
- 1.8. Personal Data: personal data within the meaning of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, or any subsequent or other applicable data protection law.
- 1.9. Provider: Visual Retailing B.V., whose registered office is at Kinderhuisingel 4J, 2013AS Haarlem, The Netherlands.
- 1.10. Service: means the software known as ShopShape that is owned and operated by the Provider, and that will be made available to the Customer as a web-based service (i.e. via the internet) under the Agreement and that can (also) be accessed through mobile applications, all as described in the Offer;
- 1.11. Service Level Agreement (SLA): the service level agreement that applies to the Service and specifies the availability of the Service and Support Services provided by the Provider, as may be amended from time to time. The current SLA is available on Provider’s website.
- 1.12. Standard Use: means the maximum amount of megabytes per month for which the Customer is allowed to use the Service and which is set out in the Offer.

- 1.13. Support Services: means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with the Offer;
- 1.14. Terms and Conditions: these general terms and conditions for provision of the Service.
- 1.15. Upgrades: new versions of, and updates to, the Service, whether for the purpose of fixing an error, bug or other issue in the Service or enhancing the functionality of the Service. A new version is identified by a version number.
- 1.16. User: an employee, a contractor or client of the Customer duly authorized by a Customer Contact in accordance with clause 5.1.

2. Formation of Agreement

- 2.1. The Provider will send the Offer for the provision of the Service to Customer. The Offer will be deemed accepted by the Customer once it has been signed by the Customer and returned to the Provider. Returning such a signed copy of the Offer will be considered an irrevocable offer of the Customer to conclude an agreement based on the terms and conditions thereof and will not constitute a binding agreement between the Provider and the Customer. The Provider will only be bound by the Offer if the Offer has been counter-signed for acceptance by a duly authorized person of the Provider.
- 2.2. These Terms and Conditions will be applicable to the Offer, the Agreement and all subsequent orders for the Service by the Customer.
- 2.3. In the event of a conflict between the terms and conditions contained in the Offer (excluding its appendices) and these Terms and Conditions, the former will prevail. In any event, these Terms and Conditions will override any different or additional terms or conditions contained or referred to in the Offer by the Customer or any other document or correspondence from the Customer. No addition, alteration or substitution of these Terms and Conditions will bind the Provider or form part of any Agreement unless they are expressly accepted in writing by a person authorized to sign on the Provider's behalf. The Provider explicitly rejects the applicability of the Customer's (general) terms and conditions.

3. Description of the Service

- 3.1. The Service consists of the availability of and access to the software known as ShopShape as a web-based application (i.e. through the Internet) as further described in the Offer.
- 3.2. The Service will be hosted in the manner specified in the SLA.
- 3.3. The Provider will provide the Service and Support Service in accordance with the service levels that are included in the SLA. If the Provider does not meet these service levels, the SLA stipulates the consequences thereof. The SLA availability percentages are measured over one (1) calendar month.
- 3.4. The Provider is not obliged to restore corrupted or lost data, to the extent such data cannot be restored or retrieved using the backup procedure defined in the SLA.
- 3.5. The Customer acknowledges that the Service is provided as a generic, web-based service for all customers of the Provider. The Provider therefore does not guarantee that the Service meets the specific requirements and objectives of the Customer.

4. Access to the Service

- 4.1. Upon conclusion of the Agreement, the Provider will provide the information required to access the Service and the Manual.
- 4.2. The software and hardware requirements in order to access the Service are described in the Offer. As far as third party technology or software is required for access to and/or use of the Service, these will be specified in the Offer. The Customer is solely responsible for obtaining all the appropriate licenses to use any third party software or hardware.
- 4.3. Customer's Contact is responsible for authorization of Users accessing the Service. Access to the Service is personal. A User may not grant access to the Service to a person not authorized by the Customer's Contact. The Customer hereby warrants that only authorized Users will make use of the Service.

4.4. An Internet connection is necessary for obtaining access to the Service. The Customer is solely responsible for having and keeping an Internet connection and/or other telecommunications networks. Sending data and information via the Internet and/or other telecommunications networks is the sole responsibility and risk of the Customer.

5. Use of the Service

5.1. Users may use the Service during the term of the Agreement within the Customer's organization and for internal purposes of the Customer only. Users will use the Service in accordance with the Manual. The Customer may only allow use of the Service by its own employees and external parties who are, based on a written protocol, participating in the realisation of the goals of the Customer. Such external parties are restricted to clients of the Customer if and to the extent they participate in the visual merchandising activities of the Customer. Employees of the Customer also include temporary employees and individual contractors who are performing services for the Customer. The Customer is not permitted to allow use of the Service by any third party not covered by this clause.

5.2. In exchange for the payment of the fee or fees for the use of the Service as specified in Offer, the Customer has the right to Standard Use of the Service. Any use of the Service that exceeds the Standard Use, will - in accordance with clause 11 of these Terms and Conditions - be charged additionally.

5.3. The Customer is not permitted to:

- (a) grant or otherwise allow access to parties other than those referred to in clause 5.1;
- (b) use the Service for purposes other than those laid down in these Terms and Conditions and the Offer;
- (c) adapt, change or otherwise modify the Service;
- (d) lease, timeshare, host or outsource the Service or to provide the Service to unauthorized users on a subscription basis;
- (e) delete or modify any trademark, logo or other indication from the Provider;
- (f) allow any third party to use and / or access the Service, unless the Provider has explicitly allowed to do so; or
- (g) reverse engineer, decompile or disassemble the Service, except to the extent expressly permitted based on the applicable laws and regulations.

6. Intellectual Property

6.1. Other than as expressly granted herein, all right, title and interest in and to all intellectual property rights, including but not limited to any copyright, trademark and data base right, vested in the Service, including the content therein and the selection and arrangement thereof, shall at all times remain with the Provider. Nothing in these Terms and Conditions and/or the Agreement is intended to transfer all or part of such rights.

6.2. Other than as expressly granted herein, all right, title and interest in and to the Customer Data shall at all times remain with the Customer. Where necessary for the implementation of the Agreement, the Customer provides the Provider a non-exclusive, non-transferable right to use the Customer Data for the duration of the Agreement. The Customer will indemnify the Provider for any claim of an alleged infringement of the rights of a third party to the extent that the violation is caused by Customer Data.

7. Upgrades

7.1. The software used for the Service is standard and is, at the Provider's discretion, regularly updated.

7.2. The Provider aims to install Upgrades with minimal adverse impact on the Customer. The Provider will timely inform the Customer if an Upgrade leads to adverse consequences for the Customer.

7.3. Updates are subject to the service levels described in the SLA.

8. Audit

- 8.1. The Provider has a right to verify compliance of the Agreement by the Customer, including but not limited to the use of the Service pursuant to clause 5, through an audit during the term of the Agreement.
- 8.2. The Customer will fully cooperate with an audit and shall provide access to all required information as part thereof. The cost of the audit shall be borne by the Provider if the audit shows that the Agreement is complied with. The cost of the audit shall be borne by the Customer if the audit shows that the Agreement is not complied with.

9. Liability

- 9.1. The liability of the Provider under the Agreement is limited to direct damages up to the amount of the amount of fees (excluding VAT) received by the Provider under the Agreement during three (3) months prior to the event giving rise to liability.
- 9.2. Liability of the Provider for indirect damage, including but not limited to consequential damages, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims of customers of the Customer, corruption or loss of data, damage relating to objects, materials or software of third parties prescribed by the Customer, damage relating to the engagement of suppliers prescribed by the Customer, is excluded.
- 9.3. The liability caps referred to in clauses 9.1 and 9.2 will not apply if and insofar the damage is the result of the wilful misconduct or gross negligence by the Provider.

10. Force majeure

- 10.1. No delay or failure to perform on the part of the Provider will be considered a breach of the Agreement if it is shown to be due to any event or cause beyond the reasonable control of the Provider failing to perform, including without limitation, strikes, riots, failures of sub-contractors, civil disturbances, actions or inactions concerning governmental authorities, epidemics, wars, embargoes, severe weather, fire, earthquakes or acts of God.
- 10.2. The Provider strives to establish and implement a work-around plan for the delay which minimizes disruptions to the Customer resulting from the delay or failure to perform due to any of causes mentioned in clause 10.1. If such delay or failure to perform continues for a period of two (2) or more months, either Party may terminate the Agreement.

11. Fees

- 11.1. In consideration for the provision of the Service, the Customer shall pay to the Provider the fees set out in the Offer in accordance with this clause 11 of these Terms and Conditions.
- 11.2. Possible types of payments are:
 - (a) One-time payment
 - (b) Recurring payments (e.g. certification costs, Support Services)
 - (c) Hosting fees resulted by higher than Standard Use
 - (d) Payment of other fees mentioned in the Offer.
- 11.3. The Provider may adjust its fees annually according to the then-current Dutch CPI index for business services (as published on www.cbs.nl or a successor site). Adjustment of the fees shall be made by giving notice to the Customer in writing or by electronic means (email). Notice shall be provided at least two (2) months before the changed fees take effect.
- 11.4. All fees are payable within fourteen (14) days from the date of invoice presented to the Customer by the Provider. All amounts due shall be paid in full without any deduction, abatement, set off or withholding of any kind by the Customer.
- 11.5. Any payments owing to the Provider pursuant to the fees not remitted within the period specified in clause 11.3 shall be subject to the statutory interest rate in the Netherlands.

- 11.6. If the Customer fails to pay the fees in accordance with the terms of this clause 11, the Provider may, at its sole discretion, suspend delivery of the Service and/or Support Services until the overdue amounts have been paid in full. The rights granted in this clause 11.6 are in addition to any other rights that the Provider may have under the Agreement or at law.
- 11.7. The fees as set out in this clause 11 are exclusive of all taxes. The Customer shall pay all taxes arising in respect of the Service for which a customer would usually be responsible subject to the applicable tax legislation.

12. Data Protection

- 12.1. The use of the Service will entail the processing of Personal Data. The Parties will comply with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (as implemented in the applicable national law) ("Data Protection Laws" or "DPL") and any subsequent applicable data protection legislation.
- 12.2. The Provider, acting as the data processor, will process Personal Data in the context of the Service on behalf of and upon the instructions of the Customer, acting as the data controller. Any further processing by the Provider will only take place upon the Customer's instructions or upon a legal obligation.
- 12.3. The Provider will process Personal Data in accordance with the DPL and will provide all relevant technical, organizational and security measures to protect Personal Data and prevent unauthorized access to Personal Data.
- 12.4. The Customer warrants to adhere to the DPL and any other laws protecting privacy. The Customer guarantees the legality of the use of Personal Data processed by the Provider in the context of the Service.
- 12.5. The Customer indemnifies the Provider for claims by persons whose Personal Data are processed by the Provider on behalf of the Customer in the context of the Service, unless the Customer proves that the facts on which the claim is based are attributable to the Provider.

13. Confidentiality

- 13.1. Each Party shall at all times, both during the term of the Agreement and thereafter, keep and hold all Confidential Information of the other Party in the strictest confidence, and shall not use such Confidential Information for any purpose, other than as may be reasonably necessary for the performance of its duties pursuant to the Agreement, without the other Party's prior written consent.
- 13.2. Each Party agrees:
- (a) that it will not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in these Terms and Conditions; and
 - (b) that it will take all reasonable measures to maintain the Confidentiality of all Confidential Information of the other Party in its possession or control, which will in no event be less than the measures it uses to maintain the Confidentiality of its own information of similar importance.
- 13.3. Notwithstanding the foregoing, each Party may disclose Confidential Information:
- (a) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law; or
 - (b) on a "need-to-know" basis under an obligation of Confidentiality to its authorized agents, contractors, legal counsel, accountants, banks and other financing sources and their advisors.

14. Term and Termination

- 14.1. The Agreement will commence on the Effective Date and shall remain in force for a minimum term of one (1) year as from the Effective Date, unless terminated earlier in accordance with this clause 14. After expiry of the initial period, and any subsequent period, the Agreement will be automatically renewed for periods of one (1) year each, unless terminated in writing at least three (3) months prior to the end of the then-current term.
- 14.2. Either Party may terminate the Agreement if the other Party breaches any material obligation under the Agreement and fails to cure such breach within thirty (30) days after reasonable notice of the breach has been

delivered to such Party. For the purpose of this clause, a breach of clauses 4.3 and 5 of these Terms and Conditions will be considered material.

- 14.3. The Parties may terminate the Agreement with immediate effect upon written notice, if one or more of the following situations arise: (i) the other Party is declared insolvent or has asked suspension of payment; (ii) the other Party's business is wound up or discontinued; or (iii) the other Party lost control of its assets or parts thereof due to receivership or otherwise and has not regained control thereof within one (1) month.
- 14.4. The Parties explicitly exclude the possibility to prematurely terminate the Agreement prior to the minimum term under clause 14.1 or any extended term agreed upon between the Parties.
- 14.5. Upon the termination or expiry of the Agreement:
 - (a) the Customer shall pay to the Provider all amounts due on the date of termination;
 - (b) the Customer shall immediately and permanently cease to use, in any manner whatsoever, the Service and the Manual;
 - (c) each Party will immediately return to the other Party, or at the other's Party request, destroy all Confidential Information of the other Party;
- 14.6. Termination of the Agreement shall not affect any rights or liabilities of either Party accrued as of the date of termination. For the avoidance of doubt, termination of the Agreement, for whatever reason, shall not affect any payments received under the Agreement by the Provider for the Service performed up to the date of termination.
- 14.7. Clause 6 (Intellectual Property), clause 9 (Liability), clause 13 (Confidentiality), and clause 15 (Governing law and jurisdiction) hereof and all other provisions of the Terms and Conditions necessary to give effect thereto will survive the termination of all or any part of the Agreement.

15. Governing law and jurisdiction

- 15.1. These Terms and Conditions, the Offer and the Agreement are governed by Dutch law. The applicability of the Vienna Sales Convention 1980 is excluded.
- 15.2. Any dispute arising between the Parties in relation to the Agreement, the Service and/or the Terms and Conditions shall be exclusively submitted to the competent court in Amsterdam, The Netherlands.

16. Miscellaneous

- 16.1. The Provider may make use of third parties for the implementation and execution of the Agreement without prior permission of the Customer.
- 16.2. The Customer may assign the Agreement or any of its rights or obligations hereunder solely to an affiliate or to a purchaser of all or substantially all of the assets of the Customer.
- 16.3. Any provision of these Terms and Conditions which is invalid or unenforceable, will be severed from these Terms and Conditions, all without affecting the remaining provisions of the Terms and Conditions. In that event, the Parties will negotiate in good faith such changes to these Terms and Conditions as will best preserve for the Parties the benefits and obligations of such invalid or unenforceable portion.