

## § 1 Subject Matter

- 1) These GTC shall constitute the framework conditions for the Vendor, which shall enable the Vendor to use an Internet marketplace "123Machinery.com" (hereinafter referred to as the website) for a limited period of time after an agreed test phase in return for payment. This gives the supplier the opportunity to present his offers on the virtual marketplace and to make his contact details available to interested parties. A direct sale does not take place on the website. Furthermore, the Vendor offers various services that relate directly to the operation of the marketplace. Details of the services can be found at <https://123Machinery.com/en/a/Register>
- 2) The services and offers of Gommac B.V. are directed exclusively to entrepreneurs as defined by the Dutch Civil Code.

## § 2 Contract Components and definitions

### 1) Contract Components

- The respective "main contract", which regulates the contractually agreed services, prices, etc..
- These GTC, which concern the legal conditions of the contract.

The GTC of Gommac B.V. apply solely. General Terms and Conditions of the "Vendor" shall not become part of the contract. Any form of inclusion of general terms and conditions is hereby contradicted.

### 2) Definitions

- a) "Data": are data, which the Vendor deposits on the website, stores there, collects, transports, changes, or deletes.
- b) "Vendor": is the contractual partner of Gommac B.V.. It is a natural or legal person who, as an entrepreneur in the sense of the Dutch Civil Code, places offers on the Website.
- c) "Availability": means the availability of the platform on a monthly average, minus the agreed interruptions such as the "maintenance windows".
- d) "Maintenance Windows" means the times during which the Platform is not available or is only available to a limited extent at the "Nodal Point" as agreed to the "Vendor" because of maintenance or repair work.
- e) Tariff: The Vendor may choose between three different tariffs with different service offerings (Basic, Professional, Premium).

## § 3 "Availabilities", backup and maintenance windows

- 1) The "Availability" of the Website is the time range in which the "Vendor" can use the Website as agreed.
- 2) In the time periods specified as backup and maintenance windows, Gommac B.V. does not guarantee the availability of the website to the agreed extent, but there may be functional restrictions or unavailability.

## § 4 Registration, Data Details

- 1) Suppliers must register on the website and create a supplier account. A distinction is made between Retailer who offer the respective advert on a commercial basis and other entrepreneurs ("No Retailer"). Underaged persons may not register on the Website for themselves or for others.
- 2) The vendor account on the website is voluntary. However, in order to create an advert, the creation of a vendor account is required. The fields marked with an asterisk must be filled in to complete the

registration. All other information is optional. The Vendor can manage his data in the Vendor account himself.

- 3) The Vendor must provide the given data completely and truthfully. He must give the complete address (the indication of a P.O. Box is not sufficient). The Vendor is solely responsible for the correctness and completeness of his data. The same applies to updating of the data when information has changed.
- 4) If there are any indications that the password of the Vendor has been misused, the Vendor must inform Gommac B.V. immediately.
- 5) If a vendor account is not used for more than 12 months, Gommac B.V. has the right to delete this account and all associated data. The Vendor will be informed about this measure in time, at the latest one month before the deletion, via the communication data deposited by the Vendor. The Vendor can prevent the deletion of the account by logging into his user account.

## **§ 5 Vendor Account, Login**

- 1) The Vendor can manage, change or delete his data in his Vendor account.
- 2) The Vendor should log out of his user account when leaving the website.
- 3) The Vendor can view statistics, test room times, the tariff, his offers and his data in his Vendor account.

## **§ 6 Placement of Deals**

- 1) Gommac B.V. only provides the online platform in the form of a database.
- 2) The user receives all information about the Vendor and the offered product on the respective profile and offer page of the Vendor. The Vendor is solely responsible for the content on his offer page. This also applies to the links to third party sites that the Vendor places in his offers.
- 3) In order to place an advert, the vendor must register and log in to the vendor account with the specified user data. Subsequently, the link on the left side in the navigation tree, "Create new advert" leads to the interface for creating an advert. When creating an advert, all mandatory fields are marked with a red star. All other fields are optional. To publish the advert, the button "Publish advert" must be pressed. The advert is then immediately available to the public.

## **§ 7 Obligations of the supplier**

- 1) The Vendor is obliged to truthfully state whether the advert is a new, used or exhibition product.
- 2) The Provider is obligated to keep the access data provided to it confidential from unauthorized third parties and to store it securely from access by unauthorized third parties so that misuse of the data by third parties for access is impossible.
- 3) The Vendor is obliged to make his identity clearly recognizable on the offer pages.
- 4) The Vendor indemnifies Gommac B.V. from claims of third parties of any kind whatsoever, which are based on the illegality or untruthfulness of his advert or any other violation of third-party rights. The indemnification obligation also includes the assumption of legal defense costs of Gommac B.V..
- 5) The Vendor is obligated to exclusively use photos of the offered product, which he has produced himself or for which he has the corresponding rights of use. The use of placeholder images or the mere use of a company logo instead of product photos is prohibited.
- 6) Only specific products that are advertised for sale may be offered. General advertising for all products from the Vendor's assortment is not permitted.
- 7) The Vendor always keeps his offers up to date. This means that offers must be deleted immediately if the offered offer is no longer available or if something changes in the offer.

## § 8 Ranking

- 1) On the Website, it is possible to book additional options for a fee, which highlights the offers in the respective result lists (after using the search function, after selecting a category) or displays the offer on the start page:
  - a. Highlight: The advert will be highlighted in every result list for 7 days.
  - b. Top Ad: The advert will be displayed at the top of every result list for 7 days, rotating with other Top Ad adverts.
  - c. Showcase: The advert will rotate with other Showcase adverts for 7 days on the start page.

This additional option can be booked against payment of a once-only amount. Nähere Informationen hierzu werden bei der Neuanlage eines Inserates oder im Bestellprozess einer Zusatzoption angezeigt. More detailed information about this additional options will be displayed after creating a new advert or in the ordering process of an additional option.

- 2) Besides, the default sorting in the search list or in the category list is done in such a way that the newest advertisement is listed at the top.

## § 9 Granting of rights of use

- 1) The Vendor grants Gommac B.V. as the operator of the website a non-exclusive, temporally, spatially and content-wise unlimited right to use and exploit the posted / uploaded photos and texts within the scope of the current and future offer of the online service for the purpose of fulfilling the contract when posting / uploading offers via the input form. The granting of rights includes in particular the possibility to integrate and use the content within paid and free online portals (within the PREMIUM tariff).

The Vendor assures to be the author or owner of the rights of use of the contents under para. 1, including the right to grant rights of use to third parties. The Vendor also assures that the works are free of third-party rights that could conflict with the contractual granting of rights.

## § 10 Sanctions for contractual infringement

- 1) If the Vendor violates the Terms and Conditions applicable herein, Gommac B.V. may take the following measures:
  - Address a warning to the Vendor
  - Restriction of the use of the offers on the website
  - Temporary or permanent blocking of the Vendor's account with subsequent deletion (§10)
- 2) Gommac B.V. will maintain reasonableness in the choice of measures and take into account the legitimate interests of the Vendor. The Vendor may prove that it is not responsible for the violation of the applicable GTCs.

## § 11 Temporary blocking, reservation

- 1) Gommac B.V. is entitled to temporarily interrupt the connection to the Vendor's profile if there is sufficient suspicion that the Vendor is storing illegal content on or by means of the website in the media provided by Gommac B.V. or is distributing such content on the website. The blocking is to be set aside as soon as the suspicion is invalidated and / or a judicial and / or official decision is available.
- 2) If the Vendor wants to keep his offer publicly accessible, although Gommac B.V. has been requested by a third party to stop making the offer available to the public, the Vendor has to indemnify Gommac B.V. from all consequences. This possibility does not exist if Gommac B.V. is obliged to block the site due to an official order or other order from a public authority.

- 3) Gommac B.V. will provide the Vendor with the reasons for its decision on a durable medium. If Gommac B.V. completely and permanently blocks the Vendor or terminates the services, it will notify the Vendor of this decision 30 days before the termination takes effect on a durable medium of its reasoning.

## § 12 Compensation

- 1) The amount of compensation shall be based on the provisions of the selected tariff. The amounts stated are net amounts.
- 2) The costs of payment transactions and for the provision of services by the Vendor such as, in particular, connection of the Vendor to data networks by (e.g. Deutsche Telekom AG or other carriers) are not part of this Agreement.
- 3) Current costs are valid from the moment of the conclusion of the contract.
- 4) Gommac B.V. reserves the right to assert rights of retention against the Vendor in case of payment arrears from the same contractual relationship. The Vendor will be given an appropriate warning if Gommac B.V. reserves access to the Vendor profile and makes it dependent on the payment of outstanding items. Alternatively, in the case of payment arrears, the Vendor may also be notified by telephone and/or by post of the blocking of access in the case of non-payment of open items.
- 5) The Vendor is also obligated to pay the usage fee incurred by authorized or unauthorized use of the access by third parties unless the Vendor is not responsible for the use. The Vendor is responsible for proving that he is not responsible for the illegal use.

## § 13 Liability

- 1) The liability for damages caused by simple or slight negligence is limited to the amount that corresponded to the scope of risk that existed for the Vendor at the time of entering the contract and that was recognizable for Gommac B.V..
- 2) Claims are time-barred 12 months from the time when the Vendor knew of the existence of the damage or from the time when the Vendor should have become aware of the circumstances of the damage and reported it without gross negligence. These limitation periods shall not apply in cases where damage has been caused to life, physical injury or damage to health and/or in cases where the damage has been caused by gross negligence or wilful misconduct and/or in cases where the damage also involves a breach of a contractual warranty. Claims under the Product Liability Act shall remain unaffected.

## § 14 Force Majeure

- 1) If Gommac B.V. is prevented from fulfilling its obligations to provide the possibility of using the website due to the occurrence of unforeseeable circumstances for which it is not responsible and which it cannot avert despite exercising reasonable care, e.g. in the event of operational disruptions, official interventions, pandemics, power supply difficulties, virus attacks, hacker attacks, strikes or lockouts, whether these circumstances occur in the area of Gommac B.V. or in the area of its subcontractors, the period for the performance of the service shall be extended to a reasonable extent, unless the service becomes definitively impossible.
- 2) The regulations for the availability of the website do not apply to the times when the website cannot be used because of force majeure events.

## § 15 Term of contract and Termination

- 1) The free trial period can only be used once per company
- 2) In principle, the start and ordinary termination options of the respective contractual relationship result from the main contract.
- 3) Unless otherwise agreed in the respective tariff, the following shall apply: The respective "main contract" shall be concluded for a duration of 6 months. The contract can be cancelled at any time, but payment received from the user is not refundable and shall be used as a payment for commercial services of the operator only.
- 4) The right of Gommac B.V. to terminate the respective contract extraordinary and without notice in case of serious reasons remains unaffected. There is an important reason for Gommac B.V. in any case that:
  - a) the Vendor is in arrears with the payment of the fee within a period of more than one month after the invoice date;
  - b) the Vendor is insolvent or insolvency proceedings have been opened over his assets or the application for opening of insolvency proceedings has been rejected due to lack of assets; however, after the application for opening of insolvency proceedings over the Vendor's assets, Gommac B.V. may not terminate the contract due to a delay in payment of the remuneration that occurred in the period prior to the application for opening of insolvency proceedings or due to a deterioration in the Vendor's financial circumstances;
  - c) the Vendor violates essential contractual obligations and does not immediately remedy this violation even after a warning or notification of the blocking of the content by Gommac B.V..
- 5) The right of each contracting party to terminate the respective contract extraordinarily and without notice in the event of important reason shall remain unaffected. An important reason exists for Gommac B.V. in any case in which
  - a) the Vendor is in arrears with the payment of the fee within a period of more than two months;
  - b) the Vendor is insolvent or insolvency proceedings have been opened over his assets or the application for opening of insolvency proceedings has been rejected due to lack of assets; however, after the application for opening of insolvency proceedings over the Vendor's assets, Gommac B.V. may not terminate the contract due to a delay in payment of the remuneration that occurred in the period prior to the application for opening of insolvency proceedings or due to a deterioration in the Vendor's financial circumstances;
  - c) the Vendor violates essential contractual obligations and does not immediately remedy this violation even after a warning or notification of the blocking of the content by Gommac B.V..
  - d) The platform generates a new invoice before the contract expires. By paying this invoice, you agree to the then applicable rates and terms and conditions for a new period of 6 months.

## § 16 Data Protection

Gommac B.V. collects, processes and stores your personal data exclusively within the framework of the legal provisions and in compliance with the GDPR and the BDSG. Data will not be passed on to third parties without your consent. The details about the purposes of data processing can be found in the privacy policy of Gommac B.V.:  
<https://123Machinery.com/en/dtp/privacy-policy>

Complaints, requests for information and other concerns about data protection should be addressed to the person responsible at Gommac B.V.: Joris van Gompel, [info@123Machinery.com](mailto:info@123Machinery.com), 0031 625 / 047 963

**§ 17 Ineffective clauses, contract components, applicable law, place of jurisdiction**

- 1) Should any provision of these contractual regulations or any of the respective supplementary agreements to these regulations be or become invalid, this shall not affect the validity of the remaining provisions.
- 2) All agreements which contain an amendment, supplement or concretization of an element of the contract, as well as special guaranteed commitments and agreements, must be recorded in writing. If declarations of the kind are made by representatives or auxiliary persons of Gommac B.V., they are only binding for Gommac B.V. if the management of Gommac B.V. gives its written consent for this
- 3) The Vendor may assign rights and claims arising from the contractual relationship to third parties only with the prior written consent of Gommac B.V.. Gommac B.V. is entitled to assign rights and obligations from the respective contractual relationship as a whole or individual services to companies affiliated with it.
- 4) The "Contracting Parties" agree about all legal relations arising from this contractual relationship that the Dutch law shall apply.
- 5) The place of jurisdiction is exclusively the registered office of Gommac B.V.. Notwithstanding the foregoing, Gommac B.V. shall also be entitled to bring an action before the court having jurisdiction over the registered office of the Vendor

**§ 18 Modification of the GTC**

- 1) If Gommac B.V. changes provisions of the GTC, the Vendor shall be informed about the respective proposed change on a durable medium.
- 2) Gommac B.V. reserves the right to modify the Terms & Conditions under which the platform and its advertising software is offered to all users. Your continued use of the platform constitutes your acceptance of the variations.
- 3) The Vendor has the right to terminate the contract with Gommac B.V. before the expiration of the term. The termination shall become effective upon the amendment of the clause. The termination can be made in text form.

**Status of the GTC: 01.12.2022**