

# Terms and Conditions GrapeKeeper

## Version 1.1, 17-07-2018

The use of the GrapeKeeper platform (hereafter referred to as: the “**Platform**”) is subject to the below terms and conditions. The Platform of GrapeKeeper is provided by GrapeKeeper, with registered office at Voorhout 29 in (3055ER) Rotterdam, the Netherlands, and registered with the Chamber of Commerce under number 71154744 (hereafter referred to as: “**GrapeKeeper**”).

### Article 1. Definitions

The capitalised terms in these General Terms and Conditions have (in their singular as well as plural forms) the meanings set out below:

- 1.1. **Account:** the personal account which is provided to the Client by GrapeKeeper for the purpose of providing access to and use of the Platform and placing orders.
- 1.2. **Agreement:** the agreement between GrapeKeeper and the Client under which GrapeKeeper delivers Services to the Client, and of which these Terms and Conditions form an integral part.
- 1.3. **Client:** the natural person or legal entity with whom GrapeKeeper has concluded an Agreement.
- 1.4. **In Writing:** dated and signed correspondence on paper. In addition, this also includes e-mail and fax messages, insofar as the origin and integrity of such messages can be sufficiently established.
- 1.5. **Intellectual Property Rights:** all intellectual property rights and related rights, including, but not limited to, copyright, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights as well as rights to know-how.
- 1.6. **Office Hours:** the hours between 9:00 am and 5:00 pm Dutch time, Monday to Friday, excluding official Dutch national holidays.
- 1.7. **Party/Parties:** the parties to the Agreement, GrapeKeeper and the Client, individually or jointly.
- 1.8. **Services:** all services that GrapeKeeper delivers to the Client under the Agreement, including, but not limited to providing a Platform and any services concerning maintenance of a vineyard, as well as the production and delivery of wine.
- 1.9. **Terms and Conditions:** these terms and conditions.
- 1.10. **Website:** the website of GrapeKeeper, [www.grapekeeper.com](http://www.grapekeeper.com), and all related subdomains.

### Article 2. Conclusion and fulfillment of the Agreement

- 2.1. GrapeKeeper provides the Platform, that enables the Client to conclude an agreement to make use of the Services.
- 2.2. Through the Platform, the Client can place orders with GrapeKeeper and can access information related to the vineyard and the estimated delivery date of the products.
- 2.3. Personal data are processed during the use of the Services. Consult the privacystatement for more information.

### Article 3. The Services

- 3.1. GrapeKeeper provides a Platform that enables the Client to conclude an Agreement with GrapeKeeper under which GrapeKeeper will produce wine in a specific vineyard. GrapeKeeper cooperates with several vineyards for the production of wine.
- 3.2. Under the Agreement, GrapeKeeper shall cultivate and harvest grapes, produce wine in a specific vineyard on the number of square meters agreed upon between the Parties and transport the (wine)products to the Client.
- 3.3. For the avoidance of doubt, the Agreement shall be considered an agreement to perform professional services (“*overeenkomst van opdracht*”) and not a purchase agreement (“*koopovereenkomst*”).

- 3.4. The yield of the vineyard can vary per year. As a result, Grapekeeper cannot give any guarantees in this regard. The yields indicated on the Website are estimates only.
- 3.5. The Client is fully responsible for submitting correct information in his Account, which enables GrapeKeeper to inform the Client about the vineyard and the estimated delivery date of the products. GrapeKeeper is not responsible for any damage resulting from incorrect information provided by the Client.
- 3.6. During the withdrawal period of 14 days after the conclusion of the Agreement, the Client is entitled to dissolve the Agreement. Consult the withdrawal policy of GrapeKeeper via [this](#) link for more information. This withdrawal right is only applicable in the event the Client is a natural person, not acting in the course of a professional capacity.
- 3.7. The time necessary for the production of the wine may vary per year and depends, inter alia, on the weather conditions and the process of maturing the wine. GrapeKeeper will endeavour to send the products in accordance with the estimated delivery times as stipulated on the Platform. If GrapeKeeper is not able to deliver the products within this delivery period, GrapeKeeper will inform the Client via the Platform.
- 3.8. The Client has the obligation to examine the delivered products for any defects or shortcomings, as soon as possible after delivery. If the Client during this examination discovers defects or shortcomings, then the Client must inform GrapeKeeper about the discovered defects or shortcomings as soon as possible in Writing, preferably within 5 days. If GrapeKeeper deems the complaint valid, the Parties will enter into consultation with a view to resolve the complaint.
- 3.9. The risks of loss and/or damages to the products shall be borne by the Client at the time the products are delivered to the agreed delivery address.

#### **Article 4. Applicability, term and termination of the Agreement**

- 4.1. The Agreement between the Client and GrapeKeeper will commence upon registration by the Client on the Website and will then remain in force for one season. The Agreement will not be tacitly renewed.

#### **Article 5. Use of the Platform**

- 5.1. To use the Platform, upon the conclusion of the Agreement, the Client has to register to access the Platform.
- 5.2. The Client must secure access to the account by protecting the username and password against third party access. In particular the Client must keep the username and password strictly confidential. GrapeKeeper may assume that all actions undertaken from Client's account after logging in with the username and password is authorized and supervised by the Client. This means that the Client is liable for these actions.
- 5.3. The Client must not use the Platform:
  - a. in any way that is unlawful, illegal, fraudulent or harmful; or
  - b. in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.
- 5.4. Client is not permitted to use the Platform in a manner that causes a nuisance or hindrance for other users. This includes (among others) the use of personal scripts or programs for up- or downloading large amounts of data or excessively often accessing the Service.
- 5.5. The Client is not permitted to access the software code (including object code and intermediate code) of the Platform, either during or after the duration of the Agreement.
- 5.6. If in the opinion of GrapeKeeper, the continued functioning of the computer systems or network of GrapeKeeper or third parties is actually or under threat of being damaged or jeopardized, Grapekeeper may take all steps it deems reasonably necessary to end or avert such damage or jeopardy. These measures include, but are not limited to, suspension of the Services and termination of the Agreement.

- 5.7. The Client shall follow all reasonable instructions issued by GrapeKeeper related to the use of the Services.
- 5.8. GrapeKeeper may recover from the Client any loss and/or damage sustained as a result of violations of the rules under this article. The Client indemnifies GrapeKeeper against any and all third-party claims arising from Client's use of the Services or a violation of the rules under this article.

#### **Article 6. Modifications, improvements and availability**

- 6.1. GrapeKeeper may modify the Platform to correct errors, add new functionality or improve its performance. While the Parties may consult on such modifications in advance and the Client may make suggestions, the final decision on whether or not to implement the modification will be made by GrapeKeeper.
- 6.2. If, in GrapeKeeper's opinion, modifications will result in a significant change in the functionality of the Platform, GrapeKeeper will notify the Client of the modifications in advance by e-mail.
- 6.3. GrapeKeeper will endeavour to remedy any errors in the Platform, but is also dependent on its suppliers in this regard.
- 6.4. GrapeKeeper will make reasonable efforts to realize the uninterrupted availability of its Platform, but offers no guarantees in this respect.
- 6.5. If, in GrapeKeeper's opinion, a risk is posed to the operation of the computer systems or network of GrapeKeeper or third parties, for example in the event of a D(DOS) attack or malware activities, GrapeKeeper is authorised to take any and all measures it deems reasonably necessary to avert the risk and limit or prevent any loss and/or damage. This may result in degraded availability.

#### **Article 7. Support**

- 7.1. GrapeKeeper will offer the Client a reasonable level of support with regard to questions about the use of the Platform and the Services, as well as with technical issues related to the Platform.
- 7.2. The support referred to in Article 7.1 will be provided via a help desk, which can be reached per e-mail or via the chat functionality on the Website during Office Hours.
- 7.3. GrapeKeeper endeavours to handle requests submitted to the help desk within a reasonable period. The time needed to resolve reported issues may vary.

#### **Article 8. Complaints procedure**

- 8.1. GrapeKeeper takes complaints and reports regarding the Platform and the Services very seriously. In case of questions, comments and complaints, the Client can contact GrapeKeeper by means of the contact options on the website.
- 8.2. GrapeKeeper will respond to complaints about the Services as soon as possible, but no later than within fourteen (14) days of receipt.

#### **Article 9. Payment**

- 9.1. Client shall be charged a compensation when the Client submits an order through the Platform.
- 9.2. GrapeKeeper will issue an invoice for all amounts owed and will invoice in advance and electronically. Any objection raised by the Client to (the amount of) an invoice will not suspend the payment obligation.
- 9.3. All invoices are subject to a payment term of 14 days, unless the invoice specifies a different payment term or another term has been agreed to In Writing.
- 9.4. All amounts owed to GrapeKeeper are immediately due and payable in the event the Client is declared bankrupt, the Client applies for or is granted suspension of payments, the Client's activities are ceased or its business is wound up.
- 9.5. All prices quoted by GrapeKeeper are in euros and are inclusive of VAT and other government levies.

## **Article 10. Liability**

- 10.1. GrapeKeeper's liability for loss and/or damages resulting from a failure in the performance of the Agreement, an wrongful act or otherwise, is limited to the amount (exclusive of VAT and other government levies) the Client is obliged to pay under the Agreement, regardless of the number of damaging events.
- 10.2. GrapeKeeper is only liable for direct loss and/or damage arising from an attributable failure in the performance of the Agreement. Direct loss and/or damage is solely understood to mean any and all loss and/or damage consisting of:
  - a. the damage caused directly to tangible objects ('property damage');
  - b. reasonable and demonstrable costs the Client has had to incur in demanding that GrapeKeeper properly performs the Agreement, unless the defective performance is not attributable to GrapeKeeper;
  - c. reasonable costs to determine the cause and the extent of the direct loss and/or damage;
  - d. reasonable and demonstrable costs incurred by the Client to prevent or limit the direct loss and/or damage, insofar as the Client can demonstrate that such costs have resulted in limitation of the direct loss and/or damage;
  - e. reasonable and demonstrable costs for having the Agreement fulfilled by a third party, where GrapeKeeper, after receiving notice from the Client, fails to ensure proper performance within the reasonable term stipulated in the notice.
- 10.3. Any limitation or exclusion of liability stipulated in the Agreement shall not apply in the event that the loss and/or damage is attributable to (1) willfull misconduct or deliberate recklessness on the part of GrapeKeeper's management, or (2) death or bodily injury.
- 10.4. Any right to claim compensation is at all times subject to the condition that the Client notifies GrapeKeeper of the loss and/or damage In Writing within no more than thirty (30) days of its discovery.
- 10.5. GrapeKeeper cannot be obliged to perform any obligation under the Agreement if the performance is prevented due to force majeure. GrapeKeeper is not liable for any loss and/or damage due to force majeure.
- 10.6. Force majeure is considered to exist in any event in case of power outages, Internet failures, telecommunication infrastructure failures, network attacks (including D(DOS) attacks), attacks by malware or other harmful software, civil commotion, natural disaster, terror, mobilisation, war, import and export barriers, strikes, stagnation in supplies, fire, floods and any circumstance whereby GrapeKeeper is not enabled to perform or prevented from performing by its suppliers, irrespective of the reason.
- 10.7. If a force majeure situation has lasted for more than ninety (90) days, both Parties shall be entitled to give notice to terminate the Agreement In Writing with immediate effect.
- 10.8. In the event the Client is a natural person, not acting in the course of a professional capacity, Articles 10.1 to 10.7 are not applicable insofar the Articles are unreasonably onerous under the Dutch Civil Code.

## **Article 11. Intellectual property**

- 11.1. All Intellectual Property Rights to the Services that are provided by GrapeKeeper under the Agreement shall remain the property of GrapeKeeper or its licensors.
- 11.2. The Client will receive from GrapeKeeper the non-exclusive, non-transferrable and non-sublicensable limited rights to use the Platform. The rights of use apply for the duration of the Agreement. No rights are granted to Client hereunder other than as expressly set forth in the Agreement.
- 11.3. The Client is not authorised to make changes in the Platform and is not entitled to a copy of the source files of the Software, except in cases where that is permitted under mandatory law.

- 11.4. GrapeKeeper may implement technical or other measures to protect the Services. Where GrapeKeeper has implemented such security measures, the Client may not remove or circumvent such security measures.

#### **Article 12. Amendment of terms and conditions**

- 12.1. GrapeKeeper may amend these Terms and Conditions at any time.
- 12.2. GrapeKeeper will announce the changes or additions to the Client by e-mail at least thirty days before they take effect, to enable the Client to take note of them.
- 12.3. If the Client does not wish to accept a change or addition, the Client may give notice to terminate the Agreement until the date it takes effect. Use of the Services after the effective date will be regarded as acceptance of the amended or supplemented terms and conditions.
- 12.4. Both Parties will cooperate fully in respect of changes or additions to the Terms and Conditions resulting from amendments of applicable law. Such changes may be implemented without notice by GrapeKeeper, without the Client having the possibility of giving notice to terminate the Agreement.
- 12.5. The procedure in this article does not apply to minor changes. Such changes may be implemented without notice by GrapeKeeper, without the Client having the possibility of giving notice to terminate the Agreement.

#### **Article 13. Final provisions**

- 13.1. The Agreement shall be governed exclusively by Dutch law, except to the extent determined otherwise by mandatory applicable law. This choice of law does not, however, have the result of depriving the Client of the protection afforded to him or her by provisions that cannot be derogated from by virtue of the law which, in the absence of such choice, would have been applicable to the Client.
- 13.2. Where in these Terms and Conditions a Dutch term is given in italics and in brackets, after a term in English, and there is any inconsistency between the Dutch term and any term in English, the meaning of the Dutch term will prevail.
- 13.3. To the extent that the rules of mandatory law do not prescribe otherwise, any dispute between the Parties in connection with the Agreement will be submitted to the competent court in the Netherlands for the district where GrapeKeeper has its registered office.
- 13.4. GrapeKeeper may transfer its rights and obligations arising from the Agreement to a third party that takes over GrapeKeeper or its business activities.
- 13.5. The Client shall promptly notify GrapeKeeper of any change in name, (postal) address, e-mail address, telephone number and other information and details relevant to the fulfilment of the Agreement.
- 13.6. If any provision in the Agreement is found to be void or invalid, this shall not affect the validity of the Agreement as a whole. In such case, the parties will replace that provision by one or more new provisions reflecting the purport of the original provision as far as is possible under the law.