

# General Terms and Conditions (GTC)

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These Wonderwerk General Terms and Conditions (the “GTC”), including the Data Processing agreement (the “DPA”) which are incorporated herein by reference, are between the customer signing an Order (“Customer”) and Wonderwerk (defined below) (referred to herein individually as a “Party” or collectively as the “Parties”) and are effective as of the date of execution, by both Parties, of the Order being entered into which incorporates these GTC (the “Effective Date”). The term “Agreement” as used herein means these GTC, as may be amended from time to time in accordance with its terms, and any Order incorporating these GTC by reference and signed in writing by the Parties. By signing an Order, Customer acknowledges and agrees as follows:

## 1. Recital

1.1. “Wonderwerk” means Wonderwerk GmbH, Harzer Str. 39, 12059 Berlin, Germany, company registration number: HRB 197662 B

1.2. “Fee(s)” means any charges paid or owing under the Agreement including fees for the Services.

1.3. “Order” means a signed written agreement entered into pursuant to these GTC, where each Order constitutes a separate legal agreement which relates to a particular transaction for Services.

1.4. "Services" means the professional services, support and any related Materials as specified in an Order and provided by Wonderwerk to Customer pursuant to this Agreement.

1.5. "Service Period" means the initial term of the Services as well as any renewed term as specified in the Order Form as well as within these GTC.

1.6. "Materials" means any document, report, code, assessment, material, video, simulation, product information, feature, cloud service and/or software that is provided to Customer pursuant to this Agreement.

1.7. "Licence" means the sole right to use the Services as specified within the Order. The Licence does not comprise any rights to any intellectual property rights or material rights in the Materials or the Services.

1.8. To the maximum extent permitted by applicable law, these GTC apply in all matters between Customer and Wonderwerk, regardless of which platform or channel the Services are delivered or used upon, unless otherwise expressly agreed by the Parties in writing.

## **2. Contracting parties and contractual basis**

2.1. Each Party warrants that it has the full right, power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

2.2 These GTC govern the general terms and conditions for Wonderwerk delivery of the Services, while the Order specifies the specific Services ordered by the Customer. In case of any conflict between the provisions of these documents, the provisions of the Order shall prevail.

## **3. License, term and intellectual property rights**

3.1. Wonderwerk grants Customer a non-exclusive, non-transferable, non-assignable, non-sublicensable License to use the Services for Customer's internal business purposes for the duration of the Service Period as agreed within the Order Form.

3.2. The initial Service Period will automatically renew for a new renewal Service Period equivalent to the initial Service Period as specified in the Order Form or otherwise agreed to

in writing unless the Agreement has been duly terminated. Failure to pay the Fee(s) does not constitute proper termination by the Customer, and Wonderwerk, or the Representative, as applicable, may claim payment of the Fee(s) in such an event. The initial Service Period begins as agreed in the Order Form, and the Customer will only be granted access to the Services, when Wonderwerk has received a copy of the Order Form signed by the Customer.

3.3. Neither Party is transferring ownership to any intellectual property in any manner under this Agreement. Wonderwerk expressly reserves any and all rights to the Services not specifically granted under Section 3.1.

## **4. Wonderwerk obligations**

4.1. Wonderwerk shall provide the Services to Customer.

4.2. For the Service Period, Wonderwerk will ensure that the Services can be used to conduct training for which the Services are designed.

4.3. The Services will support the newest versions of the leading browsers – Chrome, Firefox, Safari, Internet Explorer and Edge.

## **5. Customer obligations**

5.1. For the Service Period, the Customer will:

5.1.1. use the Services only for internal business purposes, in accordance with the documentation and applicable law as well as within the level of functionality and quantity ordered by the Customer. The Customer will not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute or otherwise commercially exploit or make the Services available to any third party, copy, reverse engineer or attempt to ascertain the source code of the Services or any part, feature, function or user interface thereof;

5.1.2. provide the information necessary to enable Wonderwerk to provide Customer with the Services;

5.1.3. ensure that the data and information that Customer provides to Wonderwerk, including that with a view to be made public, or which Customer itself publishes through the

Services, at all times complies with applicable law (e.g. marketing and privacy law), including the law of any jurisdiction which Customer's data and information is aimed at.

## **6. Data Processing**

6.1. To the extent that Wonderwerk processes any Personal Data (as that term is defined in the DPA) on behalf of Customer: (i) Wonderwerk shall be the "data processor" and Customer shall be "data controller" under applicable law; and (ii) the Parties' respective obligations for Personal Data are set forth in the DPA.

## **7. Ordering, Pricing and Payment**

7.1. Customer will pay Wonderwerk the then applicable fees described in the Order Form for the Services in accordance with the terms therein. If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional Fees in the manner provided herein. Wonderwerk reserves the right to change the Fees or applicable charges and to institute new charges and fees at the end of the Initial Service Period or then current renewal Service Period, upon thirty (30) days prior notice to Customer (which may be sent by email). If no such notice is sent, then the Fee for the prior Service Period shall apply to the next Service Period. If Customer believes that Wonderwerk has billed Customer incorrectly, Customer must contact Wonderwerk no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Wonderwerk's customer support department or executive team.

7.2. Unless otherwise agreed in the Order Form, the Fee is an advance payment for the Services described in an Order Form or invoice issued. Wonderwerk may issue the invoice up to 30 days prior to commencement of a Service Period (or any renewal hereof). Invoices are due within 30 days from the date of the invoice.

7.3. As far as not otherwise agreed in writing between the Parties, payments are processed through a third party provider Stripe, Inc. All payments must be made through one of the payment methods supported by Stripe, Inc. Payment details will be securely stored with

Stripe and the Customer will be automatically charged at the beginning of each new renewal term.

7.4. An order of Services is made under an Order, and the relevant Fees, and the associated payment terms, are as set forth therein. In the event of late payment, Customer shall pay default interest to Wonderwerk calculated at the rate of two percent (2%) per month on the total amount due until payment has been completed.

7.5. In the absence of timely payment, Wonderwerk reserves the right to withhold the Services.

## **8. Limitation of liability**

8.1. To the extent not prohibited by applicable law, Wonderwerk shall not be liable to Customer or any third party for any lost profits, revenues, or data, financial losses or any indirect, special, consequential, exemplary or punitive damages arising out of or related to this Agreement under any legal theory, even if Wonderwerk has been advised of, knows of, or should have known, of the possibility of such damages.

8.2. Wonderwerk's total liability under this Agreement shall be limited to the amount paid by Customer for the Services provided hereunder during the twelve (12) months immediately preceding the date on which the claim at issue accrued.

8.3. Wonderwerk will not be liable for delays or failures in performance of the Services caused by forces beyond its control (including but not limited to disruption of the Internet or any act or omission made by a third party e.g. Facebook) or any force majeure event.

8.4. Wonderwerk is not liable for the legality of the content Customer provides to Wonderwerk with a view to publication and Customer shall indemnify Wonderwerk from any claim or liability that may arise against Wonderwerk in this regard.

## **9. Termination**

9.1. Either Party may terminate an Order Form, Agreement and the License with 30 days' prior written notice before the end of an applicable Service Period. The Customer is not

entitled to reimbursement of the paid Fee(s) or credits of due Fee(s) in case of the Customer's termination.

9.2. A Party may terminate the Agreement with immediate effect, if:

9.2.1. the other Party fails to correct a breach of a material term of this Agreement within 30 days after receipt of written notice of the material breach;

9.2.2. a force majeure event has lasted for 30 days from the date the other Party has announced that force majeure has occurred; or

9.2.3. any assignment is made by the other Party for the benefit of creditors, or if a receiver, trustee in bankruptcy or similar officer shall be appointed to take charge of any or all of the other Party's property, or the other Party files a voluntary petition under applicable bankruptcy laws or such a petition is filed against the other Party and is not dismissed within 60 days.

9.3. Wonderwerk is entitled to terminate the Agreement without notice upon:

9.3.1. Customer's non-payment of due payments;

9.3.2. Customer's violation of section 5.1.1. of these GTC or other misuse of the intellectual property rights of Wonderwerk and/or third parties, including copyright, design rights, patent rights, utility model rights, and trademarks; or

9.3.3. Customer's publication of material in violation of applicable law.

9.4. Upon the termination of this Agreement, all use of the Services must immediately cease and those provisions of this Agreement which by their nature are intended to survive, including without limitation Sections 8 (Limitation of Liability) and 10 (Confidentiality) and this section (Termination), as well as any outstanding obligations to pay any Fees, shall survive such termination of this Agreement.

## **10. Confidentiality**

10.1. The term “Confidential Information” means all information disclosed in written, oral, electronic, visual or other form by either Party (each a “Disclosing Party”) to the other Party (“Recipient”) and either

(a) marked or designated as “confidential” or “proprietary” at the time of disclosure or

(b) disclosed in circumstances under which it ought to be treated as confidential by Recipient. The Parties agree that the content of this Agreement, except for the GTC, are Confidential Information. Confidential Information does not include information that

(i) is or become a matter of public knowledge through no fault of the Recipient,

(ii) was rightfully in the Recipient’s possession free of any obligation of confidence,

(iii) was rightfully disclosed to Recipient by a third party without restriction as to use or disclosure, or

(iv) is independently developed by Recipient without use of or reference to Disclosing Party’s Confidential Information. Recipient shall hold the Confidential Information received from the Disclosing Party in confidence and shall not, directly or indirectly, disclose it to any third party or entity.

Recipient will limit use of and access to the Disclosing Party’s Confidential Information to Recipient’s employees and independent contractors who have

(a) a need to know,

(b) been notified that such information is Confidential Information, and

(c) entered into binding confidentiality obligations no less protective of the Disclosing Party than this Agreement. Recipient will protect the Disclosing Party’s Confidential Information by using the same degree of care as Recipient uses to protect its own confidential or proprietary information of a like nature (but not less than a reasonable degree of care). Recipient shall promptly notify the Disclosing Party upon learning of any misappropriation or misuse of Confidential Information disclosed hereunder. Notwithstanding the foregoing, Recipient shall be permitted to disclose Confidential Information pursuant to any statutory or regulatory authority or court order, provided that Recipient provides the Disclosing Party

prompt prior notice (to the extent legally permitted to do so), and the scope of such disclosure is limited to the extent possible.

## **11. Changes to the Agreement**

11.1. Customer may adjust the Services under the following conditions:

11.1.1. Customer may reduce the Services only after the expiry of the Service Period set forth in the applicable Order. The notice period for the requested alteration is equal to the termination notice period..

11.1.2. Customer may increase the number and/or extent of Services at any time.

## **12. Assignment**

12.1. Neither Party may assign this Agreement or any of its rights or obligations hereunder without the other's express written consent, not to be unreasonably withheld, except that Wonderwerk may assign this Agreement, without Customer's consent, to its successor in the event of a merger, acquisition or sale of all or substantially all of its assets, or to an affiliate that agrees to assume Wonderwerk's obligations under this Agreement. Any other purported assignment shall be void and of no force or effect. Subject to the provisions of this Section, this Agreement shall be binding upon the successors and assigns of the Parties.

## **13. Entire Agreement**

13.1. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings and communications, whether written or oral. This Agreement may be amended only by a written document signed by both parties. Any conflicting term or condition included in any Customer invoice, purchase order or other document rendered pursuant to this Agreement is of no force or effect. No action by Wonderwerk (including, without limitation, receipt of payment of any such invoice, or acceptance of any purchase order, in whole or in part) shall be construed as making any such term or condition binding on Wonderwerk. For the avoidance of doubt, where a third party delivers services directly to

Customer in connection with the Services, any terms and conditions applying to such third party services shall not be binding on Wonderwerk.

## **14. Governing law and venue**

14.1. This Agreement shall be governed by, and exclusively construed in accordance with, the laws of Germany, without recourse to its conflict of laws principles. Any dispute, controversy or claim arising out of or in connection with this Agreement or the breach, termination or invalidity thereof shall be settled in accordance with the laws of the State of Berlin in Germany, without regard to its conflict of laws rules.