

# OFF-TRACK

## TERMS AND CONDITIONS

These terms apply to all services of Off-Track regarding the Off-Track app. This App is available for iOS and Android.

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### Article 1 Applicability

- 1.1 These terms apply to all offers by Off-Track and to all agreements and other legal relationships between Off-Track and the client. These terms also apply to additional agreements and to new agreements with the client.
- 1.2 These terms are easily electronically accessible on the Off-Track website ([www.off-track.app](http://www.off-track.app)) and shall be sent upon request without delay and at no cost.
- 1.3 Terms and conditions applied by the client are explicitly rejected by Off-Track and are not part of the agreement, unless otherwise agreed upon in writing.

### Article 2 Formation of the agreement

- 2.1 Offers from Off-Track are without obligation.
- 2.2 The agreement with the client is formed by signing of the Off-Track Order Form by an authorized representative of the client. Off-Track may agree to another way of formation of the agreement.
- 2.3 For the purpose of these terms, an electronic message shall be deemed equivalent to a written notice.

### Article 3 Use of the products

- 3.1 For the use of the Off-Track app, Off-Track rents out to the client and the client rents from Off-Track the Off-Track app and other products that are noted on the signed Order Form. Off-Track will provide the number of products that are noted on this Order Form.
- 3.2 The client may request for an additional number of products during the agreement. Depending on availability Off-Track shall meet such requests.
- 3.3 The Off-Track app and other products are exclusively made available for use by the client at the agreed upon location for handing out the Off-Track app to visitors. The client is not entitled to any other use. Without the prior written permission of Off-Track, the client is not authorized to change the products or to add anything to or remove anything from the products.
- 3.4 The client shall act as a good and responsible renter and treat the products made available by Off-Track with all due care. The client shall take the appropriate measures to prevent damage and shall actively and carefully follow the specifications and instructions of Off-Track regarding the use of the products. The client is liable for the use of products by employees and visitors.
- 3.5 Information and data files that are stored in the products automatically, such as log files and information on the use of the Off-Track app, belong to Off-Track and can be accessed by Off-Track at all times. This information and these data files do not contain personal data. Off-Track will

provide access to the client to (part of) this information and these data files in the form of analytics.

#### **Article 4 Delivery of the products**

4.1 The products rented by the client shall be sent to the client by Off-Track in a way determined by Off-Track. The costs of shipping are charged to the client. Any import duties or taxes and import or custom formalities are for the account of the client.

4.2 The client shall prepare and equip the location and upon delivery install the products according to the instructions and manuals of Off-Track. Off-Track can be reached by telephone to assist the installation remotely. Assistance with regard to the installation on site and training in the use of the products is available for a fee. Off-Track cannot be held liable for delivered products that do not function or that partially function if the client has not properly prepared and equipped the location or has not installed the products according to the instructions and manuals of Off-Track.

4.3 At the request of the client and for a fee, Off-Track can provide labels for headphones that are specifically designed for the client. The client guarantees that the use of images and other information that the client provides to Off-Track for that purpose, does not violate any rights of third parties. The client indemnifies Off-Track from all claims of third parties in that respect.

4.4 Off-Track retains the legal ownership of the rented products at all times. The client is not authorized to rent, sub-rent or provide the products to third parties other than visitors as part of giving a soundwalk.

#### **Article 5 Obligations of the client**

5.1 The client is obliged to follow the instructions and directions provided by Off-Track with regard to the installation and the use of the Off-Track app.

5.2 The client shall use the App Store app or Google Play Store app to download the Off-Track app. With this app, the soundwalk can be loaded onto the client's mobile phone and changes to the soundwalk can be synchronized. The client is obliged to keep the Off-Track app and to provide it with power and connect it to the internet with internet or WI-FI at all times; that is 24 hours a day, 7 days per week, throughout the entire year.

5.3 Non-performance of the obligations stated in Article 5.2 is considered to be a default that justifies suspension of the obligations of Off-Track or termination of the agreement.

5.4 The client shall actively offer the Off-Track app to visitors in a visible location and have sufficient personnel available to offer the Off-Track app to visitors, hand them out and take them back. The availability of the Off-Track app for soundwalk shall be clearly stated at the register and on price lists. The client shall further report the availability of the Off-Track app on the website of the client and on and in other promotional materials that are used by the client.

#### **Article 6 Lost, stolen and damaged products**

6.1 The client is responsible for the security of the products that are provided to the client by Off-Track. The use of Warning IDentifiers does not guarantee that products will not be lost or stolen. Loss and theft of rented products is for the account of the client. The client is obliged to report loss and theft of products to Off-Track in writing. The client shall also replace all lost and stolen products within a period of 30 days on payment of the applicable replacement fees plus shipping costs

6.2 The client is obliged to report any damage to products made available to the client by Off-Track in writing. Off-Track shall repair these products within a reasonable time period at its own cost, unless the damage can be attributed to the client. Damage to products can be attributed to the client in case the damage occurred as a result of a culpable failure to comply with the obligations of the client as set out in these terms. In case the damage can be attributed to the client and repair is not considered meaningful in the opinion of Off-Track, Off-Track shall replace the products and the applicable replacement fees and the shipping costs shall be charged to the client.

6.3 Damage to products means that the products are defected, which is the case if they have a condition or characteristic that causes that they cannot be used in the way the client may expect of a well-maintained product to which the agreement applies.

## **Article 7 Use of the Off-Track app**

7.1 Off-Track grants the client a non-exclusive, non-transferable and non-sublicensable license during the duration of the agreement to use the Off-Track app to manage and develop content for soundwalks. The license is applicable for an unlimited number of soundwalks and languages.

7.2 In the Off-Track app content can be uploaded and developed as intended in Article 5.2. Content in the Off-Track app is not uploaded and synchronization is not possible if the client does not perform the obligations stated in Article 5.2.

7.3 The content made in the Off-Track app can, if required, also be published in the client's app or website.

7.4 The client shall provide the names of the employees that are required to use the Off-Track app. The use of aliases in user names is not permitted. Login details are personal and shall be treated as strictly confidential. It is not permitted to post login details on publicly accessible places or to provide these to third parties, unless explicitly permitted in writing by Off-Track. Should the client have the impression that unauthorized persons have or can obtain access to the Off-Track app, it shall immediately report this to Off-Track.

7.5 The client shall retain a copy of all content that it uploads and develops in the Off-Track app and shall keep it available in its own systems. The Off-Track app is not intended and not suitable to function as a storage or archiving platform.

7.6 The client shall not develop or upload content that is unlawful, in violation of criminal law, or that violates the rights of third parties. The client guarantees that it is authorized to reproduce, modify and publish the content as part of a soundwalk. Off-Track is authorised on the basis of these terms to process the content in the Off-Track app and to make it available through the download in the App Store app or Google Play Store app in order to be able to perform the agreement. The client guarantees this does not violate any rights of third parties and indemnifies Off-Track from all claims of third parties in that respect.

7.7 Off-Track is authorized to use part of the content of the client and the name, trade mark, logo and design of labels of the client for the promotion of its services, unless the client communicates to Off-Track in writing that specific content may not be used in that way.

## **Article 8 Availability of the Off-Track app**

8.1 Off-Track strives for optimum availability of the Off-Track app, but does not give any guarantee as to availability.

8.2 Necessary maintenance work and the performance of updates that can impede availability shall be performed outside normal working hours as much as possible.

8.3 Software used for the Off-Track app is made available to the client "as is" without any warranty.

8.4 For technical and functional questions, the client can contact the Off-Track helpdesk via [sophie@off-track.app](mailto:sophie@off-track.app) or via the contact details that are published on <https://www.off-track.app/contact>.

## **Article 9 Fees**

9.1 The client shall pay Off-Track the fees that have been agreed upon. In case the parties have agreed that the client shall pay a fee per tour, all tours will count in which the visitor started at least 3 clips in order to determine the fee payable.

9.2 All fees charged by Off-Track are in EURO, unless otherwise specified on the Order Form, and excluding shipping costs, travel and accommodation costs and VAT, if applicable.

9.3 In case the parties have agreed that the fees are based on the number of tours used by visitors of the client and the price for a tour is not included in the price of the entry ticket for the visitor of the client, the client and Off-Track shall agree on the price for the tour and the client shall not adjust this price without agreement from Off-Track.

## **Article 10 Payment**

10.1 Fees to be paid are invoiced on a yearly basis by Off-Track, unless otherwise agreed in writing. In case the parties have agreed that the fees are based on the number of soundwalks used by visitors of the client, Off-Track will also send a final invoice based on the actual number of soundwalk used in the first month after each calendar year or after the termination of the agreement at another time.

10.2 Payment will be made within 14 days after the invoice date.

10.3 Exceeding a payment term results in default without a written notice of default being required. Should a payment term be exceeded, Off-Track is authorized to charge a default interest

rate of 1% of the outstanding amount per month, or part of the month, unless the statutory commercial interest rate is higher, in which case the statutory commercial interest rate shall apply. The client is liable for all judicial and extrajudicial expenses (including reasonable attorneys fees) that Off-Track incurs as a result of the collection of invoices with a minimum of 15% of the outstanding invoice amount including the interest payable.

10.4 The client is not authorized to suspension of its payment obligations. The client is not permitted to offset any payment obligation to Off-Track, on whichever ground, against a claim from the client to Off-Track.

10.5 Off-Track is authorized to suspend the compliance of any of its obligations in case the client fails to meet its (payment or other) obligations, on whichever ground, to Off-Track. Off-Track is not liable for damages as a result of exercising the right of suspension

### **Article 11 Services of third parties**

11.1 Off-Track has a network of third parties that can perform services for the client. For example installation of products or services in terms of writing a script, translating, recording a text and interactive design. In case the client wishes to use the services of these third parties, it shall conclude agreements with these third parties in its own name and at its own cost and risk. Therefore, the client is solely responsible for making arrangements with these third parties regarding the execution of the agreement, planning, and regarding intellectual property rights on deliverables. Off-Track is not liable for the services performed by these third parties, even if the invoices by these third parties are sent through Off-Track.

### **Article 12 Information and the right of inspection**

11.1 The client is obliged to provide Off-Track with the information regarding the number of visitors per month over the past year at the end of each calendar year, or after the termination of the agreement at another time. Furthermore, at the request of Off-Track, the client shall provide these details at any other time. The number of soundwalks taken by visitors of the client is shown in the information in the Off-Track app in which this is automatically logged.

12.2 Off-Track is at all times authorized to inspect the Off-Track app and other products made available, as well as their use, and to read out data from these products at the location of the client. The client shall provide Off-Track access to all areas in order to perform the aforementioned inspection and shall cooperate with the inspection.

### **Article 13 Intellectual property**

13.1 All intellectual property rights, including but not limited to copyrights, neighbouring rights, database rights, design rights, trademark rights, trade name rights, trade secret rights and patent rights on and regarding the Off-Track app and the other products and services of Off-Track, including the know-how related thereto, and in connection with the company of Off-Track, are vested in Off-Track and its licensors. The client has no use right and is not permitted to reproduce, edit or publish other than as expressly stated in these terms or as is permitted under mandatory law.

13.2 Off-Track is allowed to take technical measures to protect intellectual property rights. The client shall not remove, avoid or bypass this security. Off-Track may impose (temporary) restrictions regarding the extent of use rights, as far as this is reasonably necessary in order to enforce its intellectual property rights.

13.3 The client is not permitted to integrate or combine parts of the Off-Track app software in part or as a whole in or with software that was not made available by Off-Track. Decompilation, reverse engineering or any form of translating or editing of the Off-Track app software is not permitted unless and exclusively when these actions completely fall under what is permitted by the Dutch Copyright Act. It is not permissible to upload viruses or malicious codes, to hack or spam or to send Ddos attacks.

### **Article 14 Privacy**

14.1 Off-Track processes personal data in accordance with the EU General Data Protection Regulation (EU 2016/679) and other applicable data protection rules and regulations.

### **Article 15 Competition**

15.1 During the course of the agreement, the client shall not use the services or products of suppliers that compete with the services and products of Off-Track.

## **Article 16 Force majeure**

16.1 In addition to the provisions of Article 6:75 of the Dutch Civil Code, a failure to perform the agreement cannot be attributed to Off-Track if it is the result of circumstances that are outside of the control of Off-Track, including: war, threat of war, mobilization, riots, epidemics, pandemics or illness outbreaks or the worsening thereof, strikes or lockouts, fire, flood, illness and/or injury of its personnel, computer malfunctions, business interruption and reduced production, lack of raw materials or packaging materials, transport delays, judicial intervention, import restrictions or other restrictive measures imposed by the government, the absence of (local) quality marks for the products of Off-Track, as well as any other hindering circumstances which do not exclusively depend on the will of Off-Track, such as non delivery or late delivery of goods and services by third parties engaged by Off-Track.

16.2 In such a case the obligations of Off-Track are suspended. Only after the expiration of a six-month period, Off-Track and the client are authorized to fully or partially terminate the agreement. Suspension and termination by Off-Track do not lead to any liability for damages, even if Off-Track would gain any advantage therefrom.

## **Article 17 Liability**

17.1 Off-Track is liable for damages the client suffers as a result of an attributable unlawful act of Guide ID or an attributable failure in the performance of its contractual obligations by Guide ID. However, Off-Track is only liable for damages that are the direct and immediate result of the unlawful act or failure from which its liability arises (direct damages). Off-Track is therefore among other types of damages not liable for indirect damages or consequential damages, such as those in the form of loss of turnover, loss of profit, interruption of business or damage claims of third parties.

17.2 The liability of Off-Track is at all times limited to the amount paid by its insurance company in the specific circumstances. If, for whichever reason, there is no payment under the insurance policy of Off-Track, the liability of Off-Track is limited to an amount of €10,000.

17.3 Default on the part of Off-Track is only established after it is notified of the default in writing, has been given the opportunity to fulfil its obligations within a reasonable term and has let this term pass without fulfilling its obligations.

17.4 Damage claims are due and payable only after the insurance company made its payment to Off-Track. Each damage claim shall expire one year after the date on which the client becomes aware, or could reasonably have become aware, of the damage and of Off-Track as the party liable.

17.5 The abovementioned exclusions and limitations of liability do not apply in case of wilful misconduct of gross negligence on the part of Off-Track.

## **Article 18 Duration and termination of the agreement**

18.1 The agreement with the client is entered into for the period that is agreed upon. After this period the agreement is tacitly renewed for a period of the same length, which period shall be tacitly renewed for further periods of the same length each time, unless the agreement is terminated in writing by one of the parties taking effect at the end of the running period bearing in mind a notice period of 2 months.

18.2 Off-Track is allowed to fully or partially terminate an agreement with the client in writing with immediate effect without notice of default and without any compensation or payment in case the client is granted suspension of payment, bankruptcy has been filed with regard to the client or the Debt Rescheduling for Natural Persons Act is invoked for the client who is a natural person, or if the client has lost its right to free disposal of its property.

18.3 In case of termination, all claims by Off-Track on the client are due and payable with immediate effect.

18.4 After the agreement has ended, the client is obliged to immediately return all other products Off-Track made available to the client, in their original condition except for normal signs of usage. Shipping is at the client's risk and for the client's account. Should there be a difference of opinion regarding the number of products that are to be returned, Off-Track's administration is decisive.

18.5 The client is in no way authorized to the suspension of any obligation to return rented products to Off-Track.

## **Article 19 Applicable law and dispute resolution**

19.1 The legal relationship between Off-Track and the client is exclusively governed by the laws of the Netherlands. The applicability of the Vienna Sales Convention is excluded.

19.2 All disputes arising from the agreement between Off-Track and the client shall exclusively be resolved by means of arbitration at the Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Disputes in the Automation or SGOA) in Haarlem, the Netherlands in agreement with the arbitration rules of the SGOA.

## **Article 20 Other provisions**

20.1 Off-Track is free to involve third parties in the performance of the agreement.

20.2 The client cannot transfer the legal relationship with Off-Track and its rights under the agreement without the prior written consent of Off-Track. This provision has effect under property law as intended in Article 3:83 paragraph 2 of the Dutch Civil Code.

20.3 Periods for the delivery of goods or services by Off-Track are target periods and not mandatory.

20.4 Off-Track is authorized to change these terms. Changes to the terms also apply to existing agreements. Off-Track shall make changes to the terms known via its website prior to implementation. The changed terms enter into force two weeks after publication or at such a time as is stated in the aforementioned publication.

20.5 These terms are also drawn up in languages other than the Dutch language. In case of contradictions, only the Dutch text applies.

20.6 Should a provision of these terms become partially or fully ineffective, the other provisions shall remain unaffected. The ineffective provision is, in such a case, considered to be replaced by a provision that is effective and differs as little as possible from the content and scope of the original provision.

20.7 These terms also apply on behalf of the legal persons or entities, auxiliary persons, and subordinates that Off-Track engages in carrying out the agreement.