

## GENERAL CONTRACTUAL CONDITIONS OPTIMONK INTERNATIONAL ZRT.

The present Terms and Conditions document contains the general terms and conditions governing the contracts for the use of the services provided by Optimonk International Private Limited Company and the use of its websites.

### 1. DEFINITIONS

- **Privacy Policy:** the Privacy Policy of OPTIMONK, available here: <https://www.optimonk.hu/adatvedelmi-nyilatkozat>;
- **AI:** one of OPTIMONK's services, which includes conversion optimization products and related services that enable OPTIMONK to make value-added changes to the User/Subscriber's website using custom algorithms. Each User/Subscriber will be provided with solutions tailored to his/her needs, which may include AI-generated product descriptions, creation of headlines, continuous testing of variants, use of keywords in Internet advertising; continuous testing and analysis of Google ads, and modification of the data on the User/Subscriber's website;
- **GTC:** these general terms and conditions;
- **Subscriber:** any User who subscribes to one of OPTIMONK's service packages;
- **Parties or Party:** the User/Subscriber and OPTIMONK jointly or separately;
- **User:** any person, natural or legal person and/or individual entrepreneur, who uses the service provided by OPTIMONK in the first 14 (fourteen) days after the creation of his/her Personal Account and is acting in the course of his/her profession, self-employment or business activity, and is therefore not a consumer;
- **Popup:** OPTIMONK's information bar and/or window template service in which the Content created by the User/Subscriber under his/her responsibility is placed, with the customizable exit Popup overlay system, the User/Subscriber can display messages in overlay windows;
- **OPTIMONK:** Optimonk International Zártkörűen Működő Részvénytársaság; registered office: 4028 Debrecen, Kassai út 129; company registration number: 09-10-000583; tax number: 26335498-2-09; e-mail address: support@optimonk.com; telephone number: + 1-415-800-4445
- **Personal Account:** an electronic space reserved for the User and/or the Subscriber on the Website, protected by a password, which contains the User and Subscriber data and the service packages used;
- **Contract:** a contract between the User/Subscriber for ordering and using the Service;
- **Services:** all the services provided by OPTIMONK to the User and/or Subscriber, the currently available Services are indicated on the Website;
- **Content:** text, images, audio, video and photo, hypertext links and forms generated within the OPTIMONK Service or placed by the User/Subscriber in the Pop-up window, and any combination thereof;
- **Customer:** any legal or natural person who enters into a contract with the User or the Subscriber and who is not a customer of OPTIMONK;
- **Website:** the websites [www.optimonk.hu](http://www.optimonk.hu) and [www.optimonk.com](http://www.optimonk.com) together or separately.

### 2. ACCEPTANCE OF THE GTC

2.1. Your use of the Website and the Service is subject to your acceptance of these Terms and Conditions and the Privacy Policy. By visiting the Website and by accessing any of the Services, the User/Subscriber accepts these TOS.

2.2. The GTC and any amendments thereto are available on the Website and are accessible free of

charge. OPTIMONK may unilaterally change these GTC at any time. The User's continued use of the Service shall constitute acceptance of the modification.

2.3. OPTIMONK shall not be liable for typographical errors in these TOS, the Website, the description of the Services or the accompanying materials.

2.4. The User/Subscriber shall use the Services in accordance with these GTC and the law. The User/Subscriber shall comply with the law in the course of his/her activities, in particular, he/she shall not harm the reputation of OPTIMONK and shall act in good faith. The User/Subscriber shall be responsible for the conduct of persons acting on his behalf or designated by him when using the Service.

### **3. CONTRACTING, REGISTRATION**

3.1. In order to use the Website, to conclude the Contract and to use the Service, the User/Subscriber requires Internet access and a computer or telephone capable of displaying it, which is the sole responsibility of the User/Subscriber.

3.2. The Contract is concluded between the Parties electronically, through the Website, in Hungarian or English. The Contract is not a written contract, it is not registered by OPTIMONK and does not refer to a code of conduct. Other documents between the Parties, including cancellation notices, other contracts and applications, shall be transmitted and sent electronically, unless otherwise specified.

3.3. To use the Service, you must register by creating a Personal Account.

3.4. The User may create only one Personal Account per e-mail address on the "Registration" page of the Website. A valid registration of the User requires the express confirmation of the reading and acceptance of these GTC and the complete completion of the registration form.

3.5. The User provides the data requested in the registration form (e-mail address, password of his/her choice, surname and first name) voluntarily and truthfully. On the basis of the data provided and after entering the password, a Personal Account will be created, which the User is entitled to manage in the administration interface of the Website.

3.6. The User assumes full responsibility for the accuracy of the data and acknowledges that OPTIMONK provides the Service based on the knowledge of such data. OPTIMONK shall not be held liable for any damage suffered by the User as a result of incorrect or incomplete data or failure to notify the User of any changes to the data without undue delay, but no later than 8 (eight) days after the data change, and may claim compensation from the Customer for any damage resulting therefrom.

3.7. The password associated by the User/Subscriber with his/her Personal Account is strictly confidential. It cannot be disclosed or shared with third parties. OPTIMONK shall not be liable for misuse, loss or theft of the password under any circumstances.

3.8. The User/Subscriber is responsible for maintaining the security of his/her password and Personal Account. OPTIMONK shall not be liable for any loss or damage resulting from any breach of security of the Personal Account and password. In the event of unauthorized use of the password or Personal Account, the OPTIMONK team should be notified by e-mail to [support@optimonk.com](mailto:support@optimonk.com).

3.9. The User/Subscriber acknowledges that OPTIMONK uses the e-mail address provided during the registration of the Personal Account as the primary channel of communication.

3.10. The User/Subscriber is responsible for all activities and Content, including but not limited to data, graphics, photos and links uploaded under the Personal Account. The User/Subscriber must grant the right to use all Content. The User/Subscriber must not transmit any virus or destructive code.

#### 4. SUBSCRIPTION CONDITIONS

##### 4.1. Trial period

4.1.1. OPTIMONK provides the User with a free trial period of 14 (fourteen) days to use the Pop-up Window as a Service, without the User having to provide any payment details.

4.1.2. After the first 2 (two) months from the subscription start date, the Parties will review the results achieved in the case of AI as a Service, based on the expected return calculated in advance. If the conversion optimisation results are less than one and a half times the monthly subscription fee, a full refund may be requested or conversion optimisation may be continued, at the Subscriber's request. The details shall be subject to individual agreement between the Parties in each case.

##### 4.2. Subscription

4.2.1. After the expiry of the 14 (fourteen) day trial period, if any, the User must choose one of the subscription packages listed on the "Subscription Packages" page of the Website (prices do not include VAT) in order to continue to use his/her Personal Account and to use the Service.

4.2.2. OPTIMONK will apply the appropriate solutions for each Subscriber when providing the AI as a Service and will offer these solutions at the Subscriber's appropriate pricing. The details shall be subject to individual agreement between the Parties in each case.

4.2.3. The applicable price and VAT rate will be charged according to the tariff in force on the day of the Subscriber's subscription. All fees payable to OPTIMONK must be paid in advance by valid credit card or by bank transfer. Failure to pay will result in the deactivation of the User/Subscriber's Personal Account.

4.2.4. OPTIMONK is entitled to change the tariff or introduce new charges at any time. Subscription fees already paid shall not be affected by such modification.

4.2.5. Subscriptions can be cancelled at any time at support@optimonk.com or via your Personal Account. OPTIMONK does not offer refunds of fees paid. However, in the event that there is no trial period and the Subscriber is not satisfied with the Service and requests a refund within 14 (fourteen) days of the first payment for the Service, OPTIMONK will refund the Service fee.

4.2.6. OPTIMONK offers different subscription packages, available here: <https://www.optimonk.com/plans-and-pricing> The 6 main subscription packages for Pop-ups are:

- Master subscription package: Custom pageview limit; Unlimited Domains;
- Premium subscription package: 500,000 Pageviews / mo.; Max. 10 Domains
- Growth subscription package: 100,000 Pageviews / mo.; Max. 4 Domains
- Essential subscription package: 30,000 Pageviews / mo.; Max. 2 Domains
- Free subscription package: 15,000 Pageviews / mo.; Max. 1 Domain
- Customized package: additional customized packages are available, please contact customer support at support@optimonk.com.
- OptiMonk AI: Turn visitors into customers with AI-powered CRO & personalization

4.2.7. If the number of unique visitors exceeds the monthly unique visitors, the Pop-up Service will be blocked and the Subscriber will be notified by OPTIMONK by email or via his/her Personal Account. The subscription package rates are available here: <https://www.optimonk.com/plans-and-pricing>

4.2.8. FlexiPay is available for our customers using a Growth, Premium or a Master plan. FlexiPay acts as a safety net. It is a very easy and convenient way to make sure your Campaigns continue to run when you reach the pageview limit of your OptiMonk account. If FlexiPay is enabled in your account, your Campaigns will continue to show up for your visitors, and the pageviews that were above your account's limit will be automatically added to the next invoice and will be billed this way.

More information can be found at the following link: [https://support.optimonk.com/hc/en-us/articles/11712839105810-What-is-FlexiPay-#h\\_01H1KMKQP\\_NDJXVSAV7B82ASXMA](https://support.optimonk.com/hc/en-us/articles/11712839105810-What-is-FlexiPay-#h_01H1KMKQP_NDJXVSAV7B82ASXMA)

You can initiate the setup of FlexiPay at [support@optimonk.com](mailto:support@optimonk.com) or via chat.

4.2.9. The measurement of the number of unique visitors starts from the starting date of the paid subscription and ends on the 30th (thirtieth) day in case of a monthly subscription. Subscriptions can be for a monthly or annual period and will be automatically renewed unless cancelled.

4.2.10. In the case of an annual subscription, the Subscriber may request a change to his/her subscription package based on the monthly number of visitors before the monthly subscription deadline, while maintaining the annual subscription.

4.2.11. The subscription fee is due even if the Service is not used.

4.2.12. For payment by credit card, a valid credit card is required for payment. OPTIMONK will automatically debit the Subscriber's credit card based on the Subscriber's billing cycle (monthly or annually, depending on the Services and their billing terms) until the Subscriber validly cancels the subscription.

4.2.13. The Service is made available to the Subscriber upon payment of the subscription fee. Payment is deemed to have been made when the Service fee is credited to the OPTIMONK bank account.

4.2.14. Within 5 (five) working days after the payment of the subscription fee, OPTIMONK will issue an electronic invoice to the Subscriber. Each payment will be accompanied by a personal invoice.

4.2.15. All invoices and payment notifications will be sent directly to the Subscriber's Personal Account or to the Subscriber's email.

4.2.16. For each subscription, it is the Subscriber's responsibility to integrate the Subscriber Code into the source code of their website.

## **5. OPTIMONK'S RIGHTS AND OBLIGATIONS**

5.1. OPTIMONK grants to the User/Subscriber a non-exclusive right to use the OPTIMONK software, for which the User/Subscriber pays a subscription fee according to the current OPTIMONK tariff. The User/Subscriber shall not acquire any right or title to OPTIMONK's intellectual property and the Service other than the right of use.

5.2. OPTIMONK provides all Services "as is" without warranty of any kind, either express or implied. OPTIMONK makes no representation that the Service will meet any special requirements. The

User/Subscriber shall be solely responsible for the risks arising from the use of the Service and for the use and application of the Service.

5.3. Under no circumstances shall OPTIMONK be liable for any loss or damage arising from the use of the OPTIMONK system or for any failure in performance during use. OPTIMONK does not assume any responsibility for the Content, the User/Subscriber's products or services, nor is OPTIMONK responsible for any contract between the User/Subscriber and the Customer. To the extent permitted by law, OPTIMONK excludes all further warranties and liability, including the obligation to pay money in excess of the fee paid and liability for consequential damages.

5.4. OPTIMONK staff is entitled to log into the User's/Subscriber's Personal Account for maintenance purposes.

5.5. OPTIMONK does not create or edit Content and is not entitled to modify it, except as expressly permitted by the GTC. OPTIMONK's liability is limited to the display of pop-ups and AI-generated product descriptions and headings.

5.6. The User/Subscriber is solely responsible for the Content published in the pop-up window. OPTIMONK is not obliged to check the Content before publishing it. OPTIMONK shall be entitled to check the Content at any time after its display or otherwise verify the use of the Service in accordance with these GTC.

5.7. The product descriptions and headings generated by AI are not the property of the User/Subscriber, see. Section 8.

5.8. OPTIMONK shall not be liable in any way and shall not enter into any contact with the Customer for whom the User/Subscriber displays the Content by using the Service.

## **6. RIGHTS AND OBLIGATIONS OF THE USER/SUBSCRIBER**

6.1. The User/Subscriber undertakes to comply with these GTC and the applicable laws and regulations. The User/Subscriber shall be solely responsible for any data and Content provided or posted in connection with the Service, as well as for the content and legality of any product descriptions, headlines, underlying information, notices, and other product descriptions and headlines generated by AI or other Services.

6.2. The User/Subscriber agrees not to post any Content that is unlawful, false, misleading, or harmful, violent, racist, xenophobic or pedophilic in the Pop-up, and agrees that the Content is not defamatory, libellous, abusive, discriminatory or obscene, and in general respects the rights of third parties and the applicable laws, with particular attention to the rights and protection of children.

6.3. The User/Subscriber is responsible for the Content recorded by or on behalf of him/her and must obtain the appropriate permissions and consents necessary for the legitimate use of the Content.

6.4. The User/Subscriber must provide OPTIMONK with all the data necessary to use the Service.

6.5. The User/Subscriber is entitled to use the OPTIMONK software by using the Service. The User/Subscriber is entitled to fill the pop-up window with Content in accordance with these GTC.

6.6. The Subscriber pays a fee for the use of the OPTIMONK software, for the use of the Service. The subscription fee differs for each subscription package. Information on the individual subscription packages is available on the Website, for individual pricing please contact OPTIMONK using the contact

details provided on the Website.

6.7. In all cases, the User/Subscriber is responsible for the Content and the recording and management of the products in the pop-up window. OPTIMONK is not involved in the User/Subscriber's sales process, and these GTC do not create any contractual or other business relationship or sales partnership between the User/Subscriber and OPTIMONK.

6.8. Only the User/Subscriber is liable to its Customers.

6.9. The User/Subscriber is solely responsible for fulfilling all legal obligations related to the placement and operation of his/her own website and the Pop-up and other Services used, as well as for keeping the Content up to date and for any changes to it. In the event that the User/Subscriber does not provide updated information or does not respond to OPTIMONK's questions or requests, OPTIMONK shall be entitled to suspend the publicly accessible part of the Service until the User/Subscriber provides the necessary information.

6.10. By registering, the User/Subscriber agrees that OPTIMONK may publicly refer to the User/Subscriber as a customer, giving OPTIMONK the non-exclusive right to display the User/Subscriber's name, trade names and trademarks, images and trade dress as described below in connection with the use of the Service:

- a) on OPTIMONK's own Website,
- (b) in print and online advertising, directories, newsletters, and updates that promote the OPTIMONK Services; and
- c) in applications that are reasonably necessary and complementary to the above.

## **7. CUSTOMER RIGHTS AND OBLIGATIONS**

7.1. No legal relationship is created between OPTIMONK and the Customer under these GTC, and OPTIMONK shall have no obligation of any kind to the Customer, including the delivery of any goods or provision of any services.

7.2. The Customer acknowledges that OPTIMONK is not responsible for the Content displayed in any pop-ups or other contact information, and OPTIMONK is not responsible for any products or services purchased or ordered by the Customer from the User/Subscriber. The Customer's payment obligations are not governed by these GTC.

7.3. The Customer accepts and acknowledges that OPTIMONK is entitled to process certain data in accordance with its Privacy Policy.

## **8. INTELLECTUAL PROPERTY**

8.1. The Website in its entirety (including, without limitation, the OPTIMONK content, structure, databases, graphics, images, etc.), the OPTIMONK trademark, logo, graphic design and all elements of the Website are the exclusive property of OPTIMONK. Any reproduction or use of these, in whole or in part, is strictly prohibited.

8.2. In particular, it is forbidden to make any extracts from the databases hosted online on the Website.

8.3. The content (in particular text, images) generated or developed by the AI as a Service is the exclusive intellectual property of OPTIMONK and the Subscriber is entitled to use it only for a period of time proportional to the subscription fee paid by the Subscriber, in accordance with these GTC. The

content generated by AI as a Service is also protected by the other intellectual property rights of OPTIMONK, in particular the Subscriber may not copy it, use it as his/her own or dispose of it.

8.4. The User/Subscriber may not directly or indirectly translate, reverse engineer, decompile, or otherwise attempt to obtain the source code or underlying structure, ideas or algorithms of OPTIMONK's intellectual property, or any software, documentation or data related to the Service, or modify, translate or create derivative works based on any Service or any other OPTIMONK software or other intellectual property. You may not copy (other than for archival purposes), distribute, pledge, assign, transfer or otherwise transfer or encumber or dispose of OPTIMONK's intellectual property in any way. You may not use the Service or any OPTIMONK software for the benefit of any third party. You may not remove any trademarks or other marks.

8.5. In the event of breach of this Clause 8, the User/Subscriber shall pay to OPTIMONK a penalty of HUF 1.000.000,-, i.e. one million HUF. In addition, OPTIMONK may claim damages in excess of the penalty.

## **9. WARRANTY**

9.1. The Content provided by the User/Subscriber is the sole responsibility of the User/Subscriber. The User/Subscriber declares and warrants that he/she has all the rights and authorisations necessary to publish the Content by using the Service.

9.2. The User/Subscriber warrants that all data and information on which the Service is based is up-to-date, accurate and lawfully in the possession of the User/Subscriber.

9.3. The User/Subscriber agrees to indemnify and hold OPTIMONK harmless from and against any and all claims and actions brought against OPTIMONK by any third party in connection with the Content, including attorneys' fees and any damages and interest that OPTIMONK may incur in connection with such claims.

## **10. PENALTIES**

10.1. Without waiving any further rights or their enforcement, OPTIMONK reserves the right to enforce a penalty of HUF 1,000,000,-, i.e. one million HUF, against the User/Subscriber in case of breach of the following provision:

The User/Subscriber shall not engage in any conduct or publish any Content that advocates crimes against humanity, incites racial hatred or violence, depicts paedophilia, offends human dignity or contains offensive content (defamation, racist or abusive statements). In such a case, OPTIMONK will notify the User/Subscriber and if the Content concerned is not immediately modified or deleted, the Personal Account will be immediately cancelled without refund of the Subscriber Fee.

## **11. EXCLUSION OF LIABILITY**

11.1. OPTIMONK does not guarantee in any way the uninterrupted or error-free availability of the Service. In particular, there may be momentary interruptions due to maintenance, upgrades or technical improvements for which OPTIMONK assumes no responsibility. OPTIMONK will inform the User/Subscriber to the fullest extent possible prior to any maintenance or upgrade operations. OPTIMONK shall not be held liable for malfunctioning, inability to access or improper operation of the Pop-up window due to the User/Subscriber's inadequate equipment, due to disruptions attributable to the User/Subscriber's hosting provider or other service provider, or for any other cause beyond the Internet network and/or OPTIMONK's control, including force majeure. OPTIMONK shall also not be liable for any indirect damage suffered as a result of the publication of the Pop-ups on the Subscribers' pages. OPTIMONK cannot be held liable for graphic or typographical errors.

## **12. PERSONAL DATA**

12.1. OPTIMONK's Privacy Policy can be found at the following link: <https://www.optimonk.hu/adatvedelmi-nyilatkozat>

## **13. INACTIVATION AND DELETION OF YOUR PERSONAL ACCOUNT**

13.1. In the event of a breach of these GTC by the User/Subscriber, OPTIMONK reserves the right to suspend immediately or terminate permanently the User/Subscriber's Personal Account, access to the Service and delete the Content displayed by OPTIMONK without prior notice.

13.2. The termination of the User/Subscriber's Personal Account will result in the suspension of the entire content of the pop-ups and the product descriptions and headings generated by OPTIMONK from the User's and/or Subscriber's account after the end of the current paid period (unless, in the scenario 3.2.4.)

13.3. In the event that the User/Subscriber may use the elements of his/her Personal Account for inappropriate purposes, OPTIMONK reserves the right to terminate the Personal Account without warning. The User/Subscriber shall be solely responsible for the use of his/her Personal Account and password by third parties and for any conduct or statements made through the Personal Account, regardless of how the third party obtained the password. The User/Subscriber shall be fully liable to OPTIMONK for any damages.

## **14. OTHER PROVISIONS**

14.1. If one or more provisions of these GTC are or subsequently become invalid, the other provisions not affected by the invalidity shall remain in force.

14.2. In the event of any conflict between the sub-headings of these GTC and their content, only the content shall prevail.

14.3. Any changes in the contact details shall be notified without delay and the other Party shall be duly informed.

14.4. OptiMonk does not have offices, employees or servers in the United States OptiMonk performs all services based on the contract outside of the USA.

14.5. The cookie policy is available here: <https://www.optimonk.hu/adatvedelmi-nyilatkozat/>

14.6. Both OPTIMONK and the User/Subscriber shall make every effort to settle any disputes or disagreements that may arise under these GTC through direct negotiations in an amicable manner. If amicable settlement is not possible, the ordinary courts of Hajdú-Bihar County shall have jurisdiction to settle the dispute.

14.7. The Parties shall inform each other of any obstacles arising after the conclusion of the Contract, in particular of any circumstances preventing the performance of the Contract, and shall notify each other thereof without delay.

14.8. These GTC shall be governed by the rules of Hungarian law. In matters not regulated in the GTC, the provisions of the Civil Code in force at the time shall prevail.



14.9. Dated: Debrecen, 30th november 2023

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[Click here to download the General Terms and Conditions dated 01.01.2015 by clicking here!](#)

[Click here to download the General Terms and Conditions dated 29.06.2016!](#)

[Click here to download the General Terms and Conditions dated 02.09.2016!](#)

[Click here to download the General Terms and Conditions dated 10.03.2017!](#)

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