

MAPCREATOR TERMS OF SERVICE

The MapCreator services, owned and operated by MapCreator BV, are provided to you under these Terms of Service.

Article 1. Applicability, changes

1.1. Unless otherwise agreed in writing, these general terms and conditions (“Terms”) will apply to any and all offers, quotations, orders, order confirmations, agreements, use of services or software, sale or delivery of products, as marketed and/or supplied (“Products”) by MapCreator B.V. with registered offices at Eindhoven, The Netherlands, registered with the Chamber of Commerce at Eindhoven under number 17219346, as well as any of its affiliates or subsidiaries (hereinafter jointly referred to as “MapCreator”).

1.2. In these Terms “Customer” means any person or entity that applies for or receives any offer, quotation, order or order confirmation from MapCreator or otherwise actually or potentially enters into any agreement with MapCreator regarding any Products. In these Terms “User” means (i) any person or entity that actually uses any Products of MapCreator, irrespective of whether or not that person or entity is also a Customer of MapCreator and (ii) Customer.

1.3. Unless otherwise agreed in writing, any and all general terms and conditions of any Customer do not apply to any of the Products or any other contractual relationship between MapCreator and a Customer.

1.4. Any use of Products requires the prior acceptance of the Terms by the User and any use of Products without such acceptance is not permitted.

1.5. Acceptance of the Terms is done (i) by clicking to accept or agree to the Terms where this option is made available by MapCreator in any user interface for any Product, (ii) by acceptance in writing, or (iii) by using any Product.

1.6. A User is not entitled to assign or otherwise transfer any right, obligation or agreement without MapCreator’s prior written consent. MapCreator is entitled to assign or otherwise transfer any right, obligation or agreement at its sole discretion.

Article 2. Offers / quotations and prices

2.1. Any and all offers, and quotations submitted by MapCreator are without engagement to MapCreator and may at all times be revoked by MapCreator, unless expressly stated otherwise.

2.2. All prices offered or quoted by MapCreator are net cash, without reduction and exclusive of any taxes, duties, costs and charges owed at the time of delivery. If an order is placed and no definite price has been agreed in advance, the order will be subject to the prices which are valid at the time of the execution of the order, irrespective of any offer made before or any price charged before.

2.3. All prices and/or tariffs are exclusive of V.A.T., in Euro, unless specifically stated otherwise.

Article 3. Acceptance of an offer

3.1. Any reply to an offer or quotation which contains additions, limitations or other modifications, such as modifications regarding price, payment, quality and quantity of the products or services, place and time of delivery, will be deemed to be a rejection of the offer or quotation and to constitute a counter offer.

3.2. Any obligation or agreement only becomes binding upon MapCreator if and when the Customer’s acceptance of an offer or any other request or proposal from a User is acknowledged and confirmed by MapCreator.

Article 4. Use of the Products

- 4.1. User agrees to use any Products and all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which may be accessed to as part of, or through use of, the Products (such information hereinafter referred to as "Content") only for purposes that are (a) permitted by these Terms and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions.
- 4.2. User agrees that any registration information given to MapCreator will always be accurate, correct and up to date.
- 4.3. User shall not access (or attempt to access) any of the Products or Content by any means other than through an interface that is provided by MapCreator.
- 4.4. User shall not engage in any activity that interferes with or disrupts the Products or the Content (or the servers and networks which are connected to the Products or Content).
- 4.5. Unless otherwise agreed in writing with MapCreator, User shall not reproduce, duplicate, copy, sell, trade or resell the Products or the Content for any purpose.
- 4.6. The User is responsible (a) for maintaining the confidentiality of passwords associated with any account used to access the Products or the Content and (b) for all activities that occur under its account(s).
- 4.7. User shall immediately notify MapCreator if User becomes aware of any unauthorized use of any of its passwords or accounts.

Article 5. Performance

- 5.1. Any use of (and part of) the Product or Content is at the User's sole risk and the Products and the Content are provided "as is" and "as available".
- 5.2. Any performance specifications given by MapCreator only refer to the average performance of (the relevant part of) the Products, unless otherwise agreed.
- 5.3. Any complaints by User concerning non-performance of any part of the Products or Content shall be in writing and specify (a) the Products or Content concerned, (b) the related agreement and (c) the nature of the problem with as much detail as reasonable required for MapCreator to properly evaluate the complaint.
- 5.4. In the event that MapCreator deems a complaint justified, it shall at its sole discretion, (a) adjust the Products in question free of charge, (b) provide the Products again, (c) give a price reduction or (d) send a credit invoice.

Article 6. Exclusion of warranties

- 6.1. MapCreator and its licensors do not represent or warrant that: (a) User's use of the Products will meet User's requirements, (b) User's use of the Products will be uninterrupted, timely, secure or free from error, (c) any information obtained by User as a result of User's use of the Products will be accurate or reliable, and (d) that defects in the operation or functionality of any software provided as part of the Products will be corrected.
- 6.2. Any material downloaded or otherwise obtained through the use of the Products is done at User's own discretion and risk and User will be solely responsible for any damage to its computer systems or other devices or loss of data that results from the download of any such material.
- 6.3. Unless otherwise agreed, no advice or information obtained by User from MapCreator, including through the Products, shall create any warranty.
- 6.4. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, OMISSIONS, COMPLETENESS, CURRENTNESS AND DELAYS OF SERVICE, ARE EXPRESSLY DISCLAIMED.

Article 7. Intellectual Property

7.1. MapCreator and its MapCreator's licensors own all legal right, title and interest in and to the Products and the Content. This right, title and interest includes any and all intellectual property rights which subsist in the Products or the Content, irrespective of whether these rights are registered or not and wherever in the world these right exist ("Intellectual Property Rights").

7.2. User is not entitled to use or exploit any part of the Products, the Content or any of the Intellectual property Rights other than as expressly provided for in these Terms or as otherwise agreed in writing with MapCreator.

7.3. User shall not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the Products or the Content.

Article 8. License from MapCreator

8.1. Provided that a User has been provided access to the Content and/or uses the Products in compliance with these Terms and any applicable agreement with MapCreator, a User has a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the Products and the Content for the sole purpose of enabling the User to use and enjoy the benefit of the Products and the Content as provided by MapCreator and in the manner permitted by these Terms and any applicable agreement with MapCreator.

8.2. User shall not (and shall not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Products or the Content or any part thereof, unless this is expressly permitted or required by law.

8.3. User may not assign (or grant a sub-license of) its rights to use the Products and the Content, grant a security interest in or over its rights to use the Products or the Content, or otherwise transfer any part of its rights to use the Products and the Content.

Article 9. License from User - User Content

9.1. User retains any copyright and any other Intellectual Property Rights it already holds in any Content which User may submit, post or display on or through, the Products ("User Content").

9.2. User confirms and warrants to MapCreator that User has all the rights, power and authority necessary to grant the above license to MapCreator.

Article 10. Confidentiality

10.1. MapCreator agrees not to divulge to any third party and not to use, except for the purpose of rendering the Products, any information of a confidential nature with regard to a User or any of its the end-users, including students.

Article 11. Reservation of title

11.1. Title in and to any products delivered, will remain with MapCreator until all MapCreator invoices that are outstanding at that time – whether for the relevant products or any Products – have been fully paid by User.

Article 12. Prices and Payment

12.1. All prices as quoted will remain subject to any general MapCreator-wide price increases and any such general MapCreator-wide price increases will apply (i) upon renewal or extension for any existing agreements or purchase offers and (ii) with immediate effect for any new Customers.

12.2. Subject to any other specific written agreement, invoices of MapCreator will be due 30 days from the date of the invoice. The User shall not be entitled to suspend payment at any time or to set of any amount due to MapCreator, irrespective of any complaints by User with regard to (any part of) the Products or Content.

12.3. Payments must be made at the bank account indicated by MapCreator on the respective invoice.

12.4. The User shall be in default by the mere expiry of the payment term without any notice of default being required. If the User does not pay the invoice price due in time, it will owe MapCreator an interest of 1% of the invoice price for every month or part of the month by which the term of payment has been exceeded.

12.5. MapCreator reserves the right to suspend performance of any Products until full payment has been received.

Article 13. Suspension of Products - Termination

13.1. MapCreator shall be authorized to suspend or terminate any Products in whole or in part, with immediate effect, without notice, notwithstanding any other rights or remedies to which MapCreator is entitled, where (a) the User breaches any provision of a specific agreement between the parties or these Terms; (b) suspension of payment or bankruptcy is requested or granted with regard to the User; (c) the business of the User is shut down or liquidated.

13.2. In the cases described in 10.1 [OR 13.1 above, any invoices and other claims of MapCreator shall be immediately payable by the User.

Article 14. Liability

14.1. MapCreator, its licensors, agents, distributors, employees or associates shall not be liable for (a) any indirect, special, consequential or exemplary damages, however caused and under any theory of liability, including but not limited to any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute Products or any other intangible MAPCREATOR TERMS OF SERVICE loss; (b) any loss or damage by User as a result of (i) the deletion, corruption or failure to store any Content or communication data maintained or transmitted as part of the use by User of the Products, (ii) User's failure to provide MapCreator with accurate account information or (iii) User's failure to keep any passwords and account details secure and confidential.

14.2. The limitations of liability shall apply irrespective of whether MapCreator, its licensors, agents, distributors, employees or associates have been advised or should have been aware of the possibility of any such loss or damage.

14.3. The fulfillment of the obligations provided for in Article 5 shall be the sole and final remedy with regard to such claims of User. Any other claims or liabilities, for any reason whatsoever, are expressly excluded.

14.4. Nothing in these Terms shall exclude or limit MapCreator's warranty or any liability for damages or losses which may not be lawfully excluded or limited by applicable law, in which case the relevant liability will be limited to the maximum extent permitted by such applicable law.

Article 15. Law and jurisdiction

15.1. Any and all claims and liabilities arising out of or related to any use of the Products or in connection with any agreement governed by these Terms shall be solely governed by the law of the Netherlands, without regard to its conflict of laws provisions.

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