

# **General terms and conditions Garden Connect B.V.**

**Located at Zwanenburgerdijk 303 in (1161 NM) Zwanenburg.  
Registered with the Chamber of Commerce in Amsterdam under  
number 55257577**

## **Article 1. Definitions**

In these general terms and conditions, the following terms, always with initial capital letters, shall have the following meanings:

1. **Garden Connect:** the private company with limited liability Garden Connect B.V., trading under the name "Garden Connect", having its registered office at Zwanenburgerdijk 303A in (1161NM) Zwanenburg, the Netherlands, registered with the Chamber of Commerce under number 55257577.
2. **Client:** the legal entity, or natural person acting in the exercise of a profession or business, which has concluded or intends to conclude an Agreement with Garden Connect.
3. **Parties:** Garden Connect and Client jointly.
4. **Agreement:** any agreement between Parties, in the context of which Garden Connect has committed itself towards Client to provide Services.
5. **Services:** the services and/or work to which Garden Connect has committed itself within the framework of the Agreement towards Client, which may include the following non-exhaustive list of services in the broadest sense of the word: the development and maintenance of websites and webshops (Works), integrations with third party systems, the provision of content marketing, the provision of online marketing services, loyalty solutions, hosting and domain registration.
6. **Subscription:** an Agreement under which the Parties undertake to each other to provide continuous, recurring or successive performance, such as in the case of online marketing campaigns, licenses relating to integrations with third-party

systems, web and mail hosting and domain name registration, for a specified or indefinite period of time.

7. Work: a creation made or to be made in the context of the Agreement by or on behalf of Garden Connect and commissioned by Client and to be delivered to Client, such as a website, webshop, texts and/or other content.

8. In Writing: both written communication and communication by e-mail.

## **Article 2. Applicability**

1. These general terms and conditions apply to every offer of Garden Connect and every Agreement, unless such applicability is expressly excluded in Writing in whole or in parts.

2. The applicability of any general terms and conditions of the Client, under whatever name, is expressly rejected. Deviations from and additions to the present general terms and conditions shall only apply if and insofar as these have been accepted by Garden Connect explicitly and in Writing.

3. If, for a short or longer period of time, deviations from these general terms and conditions, whether tacitly or not, have been permitted by Garden Connect, this shall not affect its right to demand direct and strict compliance with these terms and conditions. Client shall never be able to exercise (or have exercised) any right based on the fact that Garden Connect has allowed flexibility with regard to these general terms and conditions.

4. The version of these general terms and conditions as it applied at the time the Agreement was concluded shall always apply.

5. Garden Connect reserves the right to change these general terms and conditions at any time. The amended terms and conditions shall apply from the moment that the Client has been notified of the amendment, on the understanding that the general terms and conditions that were in force on the day the Agreement was concluded shall continue to apply to Agreements already concluded.

6. If one or more of the provisions of these general terms and conditions or the Agreement as such should be null and void or be annulled, the provision concerned shall lapse and shall be replaced by a new, legally admissible and, as far as possible, comparable provision to be determined by Garden Connect.

7. These general terms and conditions also apply to Agreements that require third parties for their execution.

8. If Client refers to several (legal) persons or companies, they shall be jointly and severally bound to fulfil all obligations arising from the Agreement.

9. The Dutch text of these general terms and conditions is always decisive for the interpretation thereof.

### **Article 3. The offer**

1. Every offer of Garden Connect (including its tenders) is without obligation, unless a term for acceptance has been set in the offer. If no acceptance period has been set, no rights whatsoever can be derived from the offer if the Service to which the offer relates is no longer available in the meantime.

2. The amounts in the offer of Garden Connect are in Euros, unless explicitly stated otherwise in Writing.

3. Garden Connect cannot be obliged to abide by the terms of its offer if Client can reasonably understand that the offer contains an obvious mistake or error.

4. The prices stated in an offer of Garden Connect are exclusive of VAT and other government levies.

5. If the acceptance of Client (whether or not on subordinate points) deviates from the offer of Garden Connect, Garden Connect shall not be bound by it. The Agreement shall then not be concluded in accordance with this deviating acceptance, unless Garden Connect indicates otherwise.

6. A combined quotation does not oblige Garden Connect to carry out part of the Services for a corresponding proportion of the quoted price. An offer from Garden Connect shall not automatically apply to follow-up agreements between Parties.

## **Article 4. Terms, duration, execution and amendment of the Agreement**

1. The Agreement terminates by completion, unless it follows from the nature and/or purport of the Agreement that it is a Subscription.
2. Unless expressly agreed otherwise in Writing, a Subscription is entered into for a period of 12 months.
3. After expiry of the agreed term of a Subscription, it will always be tacitly renewed for another 12 months, unless the Subscription is terminated in good time in accordance with the provisions of the following paragraph.
4. A Subscription terminates by notice in Writing, but not before the specified term has expired. In the event of termination by the Client, this shall take place with due observance of a notice period of 30 days, unless expressly agreed otherwise in Writing. In the event of termination by Garden Connect, termination shall take place with due observance of a notice period of six months.
5. If a term has been agreed or specified for the performance of the Services, this is never a deadline. If a term is exceeded, Client shall, without prejudice to the provisions in the last sentence of this paragraph, give Garden Connect written notice of default. Garden Connect must be offered a reasonable period of time in which to execute the Agreement after all. If, for the execution of the Agreement, Garden Connect is dependent on information to be provided by Client or efforts to be made in any other way, and such information is not provided in time or such efforts are not made in time, Garden Connect shall be entitled to suspend the execution for the duration of the delay.
6. Garden Connect shall execute the Agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship. All this on the basis of the state of science known at the time.
7. Garden Connect has the right to have certain Services performed by third parties. The applicability of Sections 7:404, 7:407(2) and 7:409 of the Dutch Civil Code is excluded.
8. Garden Connect shall be entitled to execute the Agreement in different phases and to invoice the executed parts separately.

9. If the Agreement is executed in phases, Garden Connect may suspend the execution of those parts belonging to a subsequent phase until Client has approved the results of the preceding phase in Writing.

10. Client shall ensure that all data (including texts, photographs, other content, as well as feedback on proposals, etc.), of which Garden Connect indicates that these are necessary or of which Client should reasonably understand that these are necessary for the execution of the Agreement, shall be provided to Garden Connect in a timely manner. If the information required for the execution of the Agreement has not been provided to Garden Connect in due time, Garden Connect shall be entitled to suspend the execution of the Agreement and/or to charge the additional costs resulting from the delay to Client at the then customary rates. The execution period shall not commence until after Client has made the data available to Garden Connect. Garden Connect shall not be liable for damage, of whatever nature, because Garden Connect has proceeded on the basis of incorrect and/or incomplete information provided by Client.

11. In the event that the Client has not provided Garden Connect with all information required as referred to in the previous paragraph for the purpose of the production and delivery of a Work, within 12 months after the conclusion of the Agreement, the (remaining) payment shall be fully due and payable as of that moment and Garden Connect may have any relevant Subscription take effect immediately.

12. If, during the performance of the Agreement, it appears that it is necessary to amend or supplement the Agreement in order to ensure its proper performance, the Parties shall amend the Agreement in good time and in mutual consultation. If the nature, scope or content of the Agreement, whether or not at the request or indication of the Client, is changed and the Agreement is thereby changed qualitatively and/or quantitatively, this may have consequences for what was originally agreed. As a result, the originally agreed amount may be increased or decreased. Garden Connect shall include these in its quote as much as possible in advance. In addition, an amendment of the Agreement may change the originally stated term of performance. Client accepts the possibility of amendment of the Agreement, including the change in price and term of execution.

13. If the Agreement is amended, including any supplements, Garden Connect shall only be entitled to execute the Agreement after agreement has been given by the person authorised within Garden Connect and Client has agreed to the price and other terms and conditions stated for the execution, including the time to be determined for the execution of the Agreement. No or no immediate execution of the amended Agreement shall not constitute a shortcoming on the part of Garden Connect and shall not be a ground for Client to terminate or cancel the Agreement.

14. If Garden Connect cannot reasonably be required to meet a request to amend the Agreement, it may refuse to do so without being in default.

15. Should Client be in default in the proper fulfilment of what it is obliged to do towards Garden Connect, then Client shall be liable for all damage caused directly or indirectly on the part of Garden Connect.

## **Article 5. Prices and price change**

1. In the event that Garden Connect has agreed a fixed price with Client, Garden Connect shall at all times be entitled to increase this price without the Client being entitled to dissolve the Agreement for that reason, if the increase of the price is the result of a right or obligation under the law or regulations or is caused by an increase of the purchase costs, wages, etcetera, or on other grounds which could not reasonably have been foreseen at the time of concluding the Agreement.

2. If a price increase as referred to in the previous paragraph (and not as a result of an amendment of the Agreement) takes place within three months after the conclusion of the Agreement, only a Client who is entitled to invoke title 5 section 3 of Book 6 of the Dutch Civil Code shall be entitled to dissolve the Agreement by means of a written statement, unless Garden Connect:

- a. is willing to perform the Agreement on the basis of the price originally agreed;
- b. if the price increase results from a right or an obligation to which Garden Connect is subject pursuant to the law.

## **Article 6. Suspension, dissolution and premature termination of the Agreement**

1. If justified by the circumstances of the case, Garden Connect shall be entitled to suspend the fulfilment of its obligations under the Agreement or to dissolve the Agreement in whole or in part, in the event that Client does not, does not fully or does not timely fulfil its obligations under the Agreement, or in the event that after the conclusion of the Agreement circumstances have come to Garden Connect's knowledge that give Garden Connect reason to fear that Client will not fulfil its obligations, or in the event that Client was requested to provide security for the fulfilment of its obligations under the Agreement when the Agreement was concluded and this security is not provided or insufficient, or in the event that due to the delay on the part of Client, Garden Connect can no longer be required to comply with the Agreement at the originally agreed conditions.
2. Furthermore, Garden Connect shall be entitled to dissolve the Agreement in whole or in part if circumstances arise of such a nature that compliance with the Agreement is impossible or if other circumstances arise of such a nature that unaltered maintenance of the Agreement cannot reasonably be required of Garden Connect.
3. If the Agreement is dissolved, the claims of Garden Connect against Client shall be immediately due and payable. If Garden Connect suspends the fulfilment of its obligations, it shall retain its claims under the law and the Agreement.
4. If Garden Connect proceeds to suspend or dissolve the agreement, it shall in no way be obliged to compensate damage and costs incurred in any way whatsoever.
5. If the dissolution is imputable to Client, Garden Connect shall be entitled to compensation of the damage, including costs, directly and indirectly caused.
6. If the Agreement is terminated prematurely by Garden Connect, Garden Connect will, in consultation with Client, take care of any transfer of Services to be provided to third parties. This will not apply if Client is responsible for the termination. If the transfer of the Services implies extra costs for Garden Connect, these will be charged to Client. Client shall be obliged to pay these costs within the aforementioned term, unless Garden Connect indicates otherwise.
7. In case of liquidation, (application for) suspension of payment or bankruptcy, attachment - if and insofar as the attachment has not been lifted within three

months - at the expense of Client, debt restructuring or any other circumstance as a result of which Client can no longer freely dispose of its assets, Garden Connect shall be free to terminate the Agreement immediately and with immediate effect, without any obligation on its part to pay any damages or compensation. In that case the claims of Garden Connect against Client shall be immediately due and payable.

8. If Client cancels the Agreement in whole or in part, it shall still owe the full agreed price as if Garden Connect had been given the opportunity to fully comply with the Agreement.

## **Article 7. Payment and collection costs**

1. Payment must always take place within 15 days after the invoice date, in a manner to be indicated by Garden Connect, unless explicitly agreed otherwise in writing. Payment shall be made net and in euro, unless explicitly stated otherwise in writing. The costs associated with payments and currency fluctuations are at the expense or risk of the Client, unless expressly agreed otherwise in writing. In the case of a fixed price from € 2500 (excl. VAT), 35% of this amount shall be invoiced upon conclusion of the Agreement and the remainder after completion, or at the latest 12 months after conclusion of the Agreement. In the case of Subscriptions, invoices are invoiced quarterly, at the start of the relevant quarter.

2. Client agrees that Garden Connect will send the invoices due to Client by email.

3. If the Client fails to pay an invoice on time, the Client shall be in default by operation of law. In that case, the Client shall owe interest of 1% per month, unless the statutory commercial interest is higher, in which case the statutory commercial interest shall be owed. The interest on the amount due and payable shall be calculated from the moment the Client is in default until the moment of payment of the amount due in full.

4. If and as long as Client remains in default in the timely payment of an invoice, Garden Connect shall be entitled to suspend the further execution of the Agreement/Services. In the case of hosting, the above shall apply provided that the Client has been declared in default in writing, stating a reasonable period of 14 days within which the Client must make full payment and payment has not been made within that period.

5. Garden Connect shall be entitled to deduct the payments made by the Client first of all from the costs, then deduct from the interest that has fallen due and finally deduct from the principal sum and the accrued interest. Garden Connect may, without being in default, refuse an offer for payment if Client designates a different sequence for the allocation of the payment. Garden Connect may refuse full redemption of the principal sum, if Client fails to pay the outstanding and accrued interest and collection costs as well.

6. Client shall never be entitled to set off the amount it owes to Garden Connect. Objections to the amount of an invoice do not suspend the Client's payment obligation. Client who is not entitled to invoke Section 6.5.3 (Sections 231 to 247 Book 6 of the Dutch Civil Code) is also not entitled to suspend payment of an invoice for any other reason.

7. If the Client is in default or default in the (timely) fulfilment of its obligations, all reasonable costs incurred to obtain extrajudicial satisfaction shall be for the Client's account. The extrajudicial costs are calculated on the basis of the Dutch Act "Wet Incassokosten" (Collection Costs Act). However, if Garden Connect has incurred higher costs for collection that were reasonable, the costs actually incurred shall be paid. Any judicial and enforcement costs incurred shall also be recovered from the Client. The Client shall also owe interest on the collection costs owed.

## **Article 8. Liability**

1. In case Garden Connect should be liable, this liability shall be limited to what has been provided in this article.

2. Garden Connect shall not be liable for damage, of whatever nature, caused because Garden Connect has relied on incorrect and/or incomplete information provided by or on behalf of Client. Furthermore, Garden Connect shall not be liable for damage, of any nature whatsoever, caused by links/integrations with third party systems, nor for problems caused by such links/integrations.

3. If Garden Connect is liable for direct damage, such liability shall be limited to a maximum of the invoice amount of the Agreement, at least that part of the Agreement to which the liability relates. Should the damage relate to a Service with respect to a Subscription, Garden Connect's liability shall be limited to a maximum of the invoice value over a period of 12 months. The foregoing applies on the understanding that Garden Connect's liability shall never exceed the amount of the actual payment made by its insurer, as the case may be.

4. Direct damage shall be understood to mean exclusively:

- the reasonable costs for determining the cause and extent of the damage, insofar as the determination relates to damage within the meaning of these general terms and conditions;

- any reasonable costs incurred to have the defective performance of Garden Connect comply with the Agreement, unless these costs cannot be attributed to Garden Connect;

- reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to a limitation of the direct damage as referred to in these general terms and conditions.

5. Garden Connect shall never be liable for indirect damage, including consequential damage, loss of profit, missed savings, reputational damage and damage due to business stagnation.

6. The limitations of liability for direct damage included in these general terms and conditions do not apply if the damage is due to intent or deliberate recklessness on the part of Garden Connect.

7. The limitations of liability in these general terms and conditions also apply to the director(s) and employees of Garden Connect.

## **Article 9. Force majeure**

1. Garden Connect shall not be obliged to comply with any obligation towards Client if it is prevented from doing so as a result of a circumstance for which it cannot be blamed, and which is not for its account by virtue of the law, a legal act or generally accepted views.

2. In these general terms and conditions, force majeure, in addition to what is understood in this respect in the law and jurisprudence, shall mean all external causes, whether or not provided for, on which Garden Connect cannot exercise any influence, but which prevent Garden Connect from fulfilling its obligations. Including any strikes in the company of Garden Connect or third parties. Garden Connect shall also be entitled to invoke force majeure if the circumstance preventing (further) compliance with the Agreement occurs after Garden Connect was to have complied with its obligation.

3. Garden Connect may suspend its obligations under the Agreement during the period that the force majeure continues. If this period lasts longer than two months, either of the Parties is entitled to dissolve the Agreement, without any obligation to compensate the other party for damages.

4. To the extent that Garden Connect has already partially complied with its obligations under the Agreement or will be able to comply with them at the time of the force majeure taking effect, and independent value can be attributed to the part already complied with or to be complied with, respectively, Garden Connect shall be entitled to invoice the part already complied with or to be complied with separately. Client is obliged to pay this invoice as if it were a separate Agreement.

## **Article 10. Indemnification**

Client shall indemnify Garden Connect against any claims of third parties, who suffer damage in connection with the execution of the Agreement and the cause of which can be attributed to a party other than Garden Connect. In the event Garden Connect is to be held liable by third parties on that account, Client shall be obliged to assist Garden Connect both out of court and in court and shall immediately do everything to be expected in that case. In the event Client fails to take adequate measures, Garden Connect shall be entitled, without notice of default, to take these measures. All costs and damage incurred on the part of Garden Connect and third parties as a result shall be fully at the expense and risk of Client.

## **Article 11. Intellectual property**

1. Garden Connect reserves the rights and powers vested in it by virtue of the Copyright Act and/or other intellectual legislation and regulations. If, within the framework of the Agreement, photographs or images of third parties, for example of Shutterstock, are delivered to the Client, this shall take place under the conditions of the third party concerned. Garden Connect may invoke these terms and conditions towards Client. The said third parties may amend their terms and conditions as referred to herein. Client is responsible for informing himself about the applicable terms and conditions of the said third parties.

2. Garden Connect will only lend delivered Works and Services made available, including but not limited to texts, websites, web shops, apps, photographs, images, advice, technical descriptions, functional designs, digital newsletters, newsletter systems and other related Services, to Client and will never relinquish source codes and the intellectual property on the aforementioned goods.

3. Use of the Works delivered and Services made available is exclusively for the purposes provided for in the Agreement and for as long as the Client continues to fulfil its obligations under the Agreement. If no agreements have been made about the intended purposes, the Client's right of use will be limited to such use for which plans existed at the time of entering into the Agreement. These plans must be demonstrably made known to Garden Connect before the Agreement is concluded.

4. The Parties may subsequently expressly agree in Writing that the Client will purchase intellectual property rights to Works delivered. By means of a licence fee or royalty fee, an agreed form of use can be recorded in order to permit Client to use the Work outside the purposes referred to in the previous paragraph.

5. Garden Connect shall be entitled to use the knowledge it has gained by the execution of an Agreement for other purposes as well, insofar as no strictly confidential information of Client will be brought to the attention of third parties.

## **Article 12. Hosting and related services**

1. In case the Services provided by Garden Connect (also) extend to Services with respect to storage and/or passing on of material (supplied by the Client) to third parties, such as in case of web-hosting and/or e-mail services, the provisions of this article will also apply.

2. Garden Connect aims to achieve and maintain an uptime of 99.999%. However, Garden Connect does not accept any liability in cases this uptime is not achieved.

3. Client shall not publish or offer any information via (the servers of) Garden Connect which is contrary to Dutch law. This includes in particular, but not limited to, information provided without the consent of the copyright owner(s), information that is defamatory, threatening, abusive, racist, hateful or discriminatory, information that contains child pornography and information that violates the privacy of third parties or constitutes a form of stalking, as well as hyperlinks, torrents or other references to such information on third party websites anywhere in the world (even if the information would be legal in the relevant jurisdiction).

4. Garden Connect uses a complaints procedure for third parties (hereinafter referred to as: "Persons reporting") to file complaints if they believe there is use contrary to the above provision. If in the opinion of Garden Connect a complaint is justified, Garden Connect shall be entitled to remove the material or make it

inaccessible. In that case Garden Connect shall also be entitled to provide personal data of Client to the Person reporting and/or to the competent authorities. Garden Connect will inform Client about the course of this procedure.

5. In case of potentially punishable information, Garden Connect is entitled to report this. Garden Connect may hereby hand over all relevant information about Client and the information to the competent authorities and perform all other acts which these authorities request Garden Connect to perform within the framework of the investigation.

6. In the event of (well-founded) complaints about the information offered by Client, Garden Connect shall be entitled to dissolve and/or terminate the Agreement.

7. Client shall indemnify Garden Connect against all damage as a result of the above. Garden Connect shall not be liable for any damage whatsoever that Client suffers as a result of an intervention by Garden Connect within this complaint procedure, not even if the complaint turns out to be unjustified and/or the information turns out not to be in violation of Dutch law.

8. Client shall refrain from interfering with other clients of Garden Connect or internet users or causing damage to the servers. Client shall not start any processes or programs, whether or not via the server, of which Client knows or can reasonably suspect that they are a nuisance to or damage Garden Connect, its other clients or internet users. Garden Connect shall inform Client of any measures.

9. Without prior Written consent of Garden Connect the Client shall be prohibited from making the user name or user names and password or passwords provided by Garden Connect available to third parties.

10. Garden Connect may set a maximum of the amount of storage space or data traffic per month which Client may use in the framework of the Service provided by Garden Connect. If this maximum is exceeded, Garden Connect shall be authorized to charge an extra amount, in accordance with the amounts for extra data traffic mentioned on the website of Garden Connect. There shall be no liability for the consequences of not being able to send, receive, store or change data if an agreed limit for storage space or data traffic has been reached.

11. Client hereby grants Garden Connect an unlimited license to distribute, store, pass on or copy all materials distributed by Client via the systems of Garden Connect in any manner deemed suitable by Garden Connect, but only insofar as

this is reasonably necessary for the fulfilment of the Agreement by Garden Connect.

12. In case the Services pursuant to the Agreement also include the provision of backups of Client's data, Garden Connect shall, with due observance of the periods agreed upon in Writing between Parties, and in the absence thereof once a week, make a full back-up of the data of Client. Garden Connect will keep the back-up for a period to be agreed upon between Parties and, in the absence of agreements in this respect, for the periods customary at Garden Connect. Garden Connect will handle and store the backup with due care.

13. In addition to the obligations arising from the law, damage resulting from incompetence or failure to act in accordance with the above points shall be for the account of the Client.

### **Article 13. Domain Names, SSL Certificates and IP Addresses**

1. In case the Services of Garden Connect include Garden Connect mediating for Client in obtaining a domain name, SSL certificate and/or IP-address, the provisions of this article shall also apply.

2. Application, assignment, transfer and possible use of a domain name, SSL certificate or IP address are dependent on and subject to the applicable rules and procedures of the relevant registration authorities, such as the Stichting Internet Domeinregistratie Nederland for .nl domain names and the other authorities listed in Appendix 4 of the processing agreement accompanying these General Terms and Conditions. The relevant authority decides on the assignment of a domain name, SSL certificate or IP address. Garden Connect only has a mediating role in the application and gives no guarantee that applications will be granted.

3. Client can be aware of the fact of registration only by the email confirmation of Garden Connect stating that the requested domain name has been registered. An invoice for registration fees is not a confirmation of registration.

4. Client shall indemnify and hold Garden Connect harmless from all damage related to (the use of) a domain name on behalf of or by Client.

5. Garden Connect shall not be liable for the loss by Client of its right(s) to a domain name or for the fact that the domain name is requested and/or obtained

in the interim by a third party, except in cases of intent or deliberate recklessness on the part of Garden Connect.

6. In case Garden Connect registers a domain name in its name for the benefit of Client, Garden Connect shall cooperate with requests of Client for relocation, transfer or termination of this domain name.

7. When requesting (a transfer of) a domain name, SSL certificate or IP-address, the Client shall agree with the relevant conditions set by the relevant registration authorities. Garden Connect may invoke these terms and conditions towards Client. The said bodies may amend their conditions as referred to herein. Client is responsible to obtain information about the applicable terms and conditions of the bodies referred to.

8. Garden Connect shall be entitled to make the domain name and/or IP-address inaccessible or unusable, or to transfer it (or have it transferred) to its own name if Client demonstrably fails to comply with the Agreement, but only and exclusively after expiry of a reasonable term for compliance given in a Written notice of default.

9. In the event of termination of the Agreement due to breach of contract by Client, Garden Connect shall be entitled to discontinue the domain name and/or IP-address or to transfer it (or have it transferred) to its own name.

## **Article 14. Websites, email marketing, newsletters and support**

1. Garden Connect does not guarantee that the websites and systems work properly in conjunction with all types or new versions of web and internet browsers and any other software. Neither does Garden Connect guarantee that the website works properly in conjunction with all types of equipment.

2. The Client must strictly comply with the applicable laws and regulations in the field of e-mail marketing and by using the systems declares to comply with these laws and regulations.

3. In case the Services pursuant to the Agreement also include support for Client or (end)users of the Service, Garden Connect will advise on the use and functioning of the software specified in the Agreement and on the use made of the Service by telephone, via a website or by e-mail. Garden Connect may impose conditions on the qualifications and the number of contact persons eligible for support. Unless explicitly agreed otherwise in writing, support will only be provided on working days during the usual opening hours of Garden Connect. Garden Connect aims to answer support questions during these usual opening hours, within 48 hours, unless explicitly agreed otherwise in Writing. Contrary to the above, support with regard to problems with opening websites and/or the operation of e-mail will be dealt with immediately after detection. The aforementioned reaction times are only indicative. Exceeding these times shall not lead to any liability on the part of Garden Connect, unless in the case of intent or deliberate recklessness on the part of Garden Connect. Furthermore, Garden Connect cannot guarantee the correctness, completeness or timeliness of reactions or support provided.

## **Article 15. Applicable law and disputes**

1. Each Agreement and all related legal relationships between the Parties shall be exclusively governed by Dutch law, even if an obligation is wholly or partly performed abroad or if the Client is established there.

2. The court in Garden Connect's place of establishment has exclusive jurisdiction to take cognizance of legal disputes, unless the law imperatively prescribes otherwise. Nevertheless, Garden Connect has the right to submit the dispute to the competent court according to the law.

# Processing Agreement

This Processing Agreement applies to all forms of processing of personal data that Garden Connect B.V., registered with the Chamber of Commerce under number 55257577, (hereinafter to be referred to as: "Processor") on behalf of another party to whom it provides Services (hereinafter referred to as: "Controller"), hereinafter jointly referred to as: "Parties".

## Article 1. Purposes of processing

1. Under the terms of this Processing Agreement, Processor undertakes to process personal data on behalf of Controller. Processing will only take place in the context of processing agreements and payments for the services of Controller, storing data of Controller in the 'cloud' and related online services, offering and managing the online Customer Relation Management package and/or online Content Management System of Processor for Controller, maintaining telephone contact with customers of Controller for handling complaints and providing service, performing Public Relations and marketing activities for Controller, sending newsletters on behalf of Controller, managing the customer administration of Controller, customer card related information, making purchase, customer and behavioral analyses plus those purposes reasonably related or determined with further consent.

2. The personal data processed by Processor in the context of the activities referred to in the previous paragraph and the categories of data subjects they refer to are set out in Annex 1. Processor shall not process personal data for any other purpose than as determined by Controller. Controller shall inform Processor of the processing purposes to the extent that these are not already mentioned in this Processing Agreement. However, the Processor may use the personal data for quality purposes, such as polling the data subjects or carrying out scientific or statistical research into the quality of its services.

3. The personal data to be processed on behalf of the Controller shall remain the property of the Controller and/or the data subjects concerned.

## Article 2. Liabilities Processor

1. With respect to the processing operations referred to in Article 1, Processor shall ensure compliance with the applicable laws and regulations, including in any event the laws and regulations on the protection of personal data, such as

the Personal Data Protection Act, and as of 25 May 2018 the General Data Protection Regulation.

2. Processor shall inform Controller, at its first request, of the measures it has taken with respect to its obligations under this Processing Agreement.

3. The obligations of the Processor arising from this Processing Agreement also apply to those who process personal data under the authority of the Processor, including but not limited to employees, in the broadest sense of the word.

4. The Processor shall immediately notify the Controller if, in its opinion, an instruction from the Controller is in conflict with the legislation referred to in paragraph 1. The Controller is expected to take cognizance of its rights and obligations with regard to the processing of personal data and to act accordingly.

5. Processor shall, as far as this is within its power, provide assistance to Controller for the performance of a data protection impact assessment (DPIA).

### **Article 3. Transfer of personal data**

Processor may process personal data in countries within the European Union. Transfer to countries outside the European Union is not allowed if countries and/or companies do not comply with the GDPR-guidelines and fall under the Privacy Shield Directive.

### **Article 4. Distribution of responsibility**

1. The permitted processing operations shall be carried out by Processor employees within an automated environment.

2. Processor is solely responsible for the processing of the personal data under this Processing Agreement, in accordance with the instructions of Controller and under the explicit (final) responsibility of Controller. For any other processing of personal data, including in any case, but not limited to, the collection of the personal data by the Controller, processing for purposes not reported by the Controller to Processor, processing by third parties and/or for other purposes, Processor shall explicitly be not responsible.

3. Controller guarantees that the content, the use and the order to process the personal data referred to in this Processing Agreement are not unlawful and do not infringe any rights of third parties.

## Article 5. Engaging third parties or subcontractors

1. Processor may make use of third parties under this Processing Agreement on condition that prior written consent is obtained from the Controller; Controller may object if the use of a specific third party is unacceptable.
2. Processor shall in any case ensure that these third parties accept in Writing at least the same obligations as those agreed between Controller and Processor.
3. Processor guarantees the correct fulfilment of the obligations arising from this Processing Agreement by these third parties and in the event of errors on the part of these third parties, Processor shall be liable for all damage as if it had committed the error(s).

## Article 6. Security

1. With regard to the processing of personal data to be carried out, the Processor shall make reasonable efforts to take adequate technical and organisational measures against loss or against any form of unlawful processing (such as unauthorised access, impairment, alteration or disclosure of personal data). These measures are in line with the risk of processing. An overview of these measures and their policies is given in Annex 2.
2. Processor does not guarantee that security is effective under all circumstances. In the absence of an explicitly described security in the Processing Agreement, Processor shall make every effort to take the security to a level that is not unreasonable in view of the state of the art, the sensitivity of the personal data and the costs of implementation.
3. The Controller shall only make personal data available to the Processor for processing if it has ensured that the required security measures are in place. The Controller is responsible for compliance with the measures agreed by the Parties.
4. In the event communication between the Controller and third parties takes place by electronic means, such as e-mail, websites, web shops and other forms of data traffic, both Parties shall ensure proper protection against viruses and other harmful software. Processor shall make every reasonable effort to secure its systems against loss and/or any form of unlawful use and shall implement appropriate technical and organisational measures for this purpose, taking into account, inter alia, the state of the art. Processor shall not be liable to Controller for any damage resulting from the transmission of viruses, harmful software

and/or other irregularities in the electronic communication, and for messages that are not received or are damaged.

5. The Controller must secure his own (computer) system in such a way that third parties cannot have unauthorised access.

## **Article 7. Security incidents and data breaches**

1. In the event of a possible data breach, the Processor shall provide the Controller within 24 hours after the discovery of the data breach, (or as soon as possible after the Processor has been informed of it by a sub-processor), information as included in Annex 3, so that the Controller can make a report to the Supervisor if necessary.

2. The Processor shall keep the Controller informed of new developments concerning the data breach and the measures taken to limit and eliminate the extent of the data breach and to prevent a similar incident in the future.

3. The responsibility to report a data breach to the supervisor and, if necessary, to inform the data subject(s) about the data breach rests entirely with Controller. Where necessary, the Processor shall cooperate in providing adequate information to data subjects.

4. Any costs incurred to resolve the data breach and prevent it from occurring in the future shall be borne by the party causing the charge.

## **Article 8. Dealing with requests from data subjects**

In case a data subject requests to exercise his/her legal rights to Processor, Processor shall forward the request to Controller, and Controller shall further process the request. Processor may inform the data subject.

## **Article 9. Confidentiality**

1. All personal data that Processor receives from Controller and/or collects itself in the context of this Processing Agreement is subject to an obligation of confidentiality towards third parties. Processors shall not use this information for any purpose other than that for which it was obtained, even if the form of the information cannot be traced back to data subjects.

2. This confidentiality obligation does not apply to the extent that the Controller has given its explicit consent to provide the information to third parties, if the provision of the information to third parties is logically required in view of the nature of the assignment provided and the execution of this Processing Agreement, or if there is a legal obligation to provide the information to a third party.

## **Article 10. Audit**

1. Controller has the right to have audits carried out by an independent third party bound by confidentiality in order to verify compliance with security requirements, compliance with the general rules governing the processing of personal data, and anything directly related thereto.

2. This audit may take place in the event of any concrete suspicions of misuse of personal data.

3. Processor shall cooperate with the audit and provide all information reasonably relevant to the audit, including supporting data such as system logs and employees as timely as possible.

4. The findings as a result of the audit carried out shall be assessed by Processor and may be implemented by Processor at its own discretion and in the manner determined by Processor.

5. The costs of the audit are borne by the Controller.

## **Article 11. Liability and penalty provisions**

1. The liability of Processor for damage as a result of an attributable shortcoming in the fulfilment of the Processing Agreement, whether in tort or otherwise, is excluded. To the extent that the aforementioned liability cannot be excluded, it shall be limited per event (a series of consecutive events shall be considered one single event) to the compensation of direct damage, up to a maximum of the amount of the compensation received by Processor for the work under this Processing Agreement for the month prior to the event causing the damage. The liability of Processor for direct damage shall never exceed € 5,000.00 in total.

2. Direct damage is exclusively understood to mean all damage consisting of:

- damage caused directly to tangible property ('property damage');

- reasonable and demonstrable costs to induce the Processor to properly fulfil the Processing Agreement;

- reasonable costs to determine the cause and extent of the damage insofar as it relates to the direct damage as referred to here;

- and reasonable and demonstrable costs incurred by the Controller to prevent or limit the direct damage as referred to in this article.

3. The liability of Processor for indirect damage is excluded. Indirect damage is understood to mean all damage that is not direct damage and therefore includes in any case, but is not limited to, consequential damage, loss of profit, reputation damage, missed savings, reduced goodwill, damage due to business stagnation, damage due to failure to determine marketing purposes, damage related to the use of data or data files prescribed by the Controller, or loss, mutilation or destruction of data or data files.

4. The exclusions and limitations referred to in this article shall lapse if and insofar as the damage is the result of intent or wilful recklessness on the part of Processor or its management.

5. Unless compliance by Processor is permanently impossible, the liability of Processor on account of an attributable failure to comply with the Agreement shall only arise if Controller immediately issues a written notice of default to the Processor, setting a reasonable period for the rectification of the failure, and if Processor continues to fail imputably in the fulfilment of its obligations even after that period. The notice of default must contain a description of the shortcoming as complete and detailed as possible, so that Processor is given the opportunity to respond adequately.

6. Any claim for damages by Controller against Processor that is not specified and explicitly reported shall lapse by the mere expiry of six (6) months after the occurrence of the claim.

7. In the event of a breach of the Processing Agreement, Processor shall forfeit to Controller an immediately payable fine of €1,000.00 per breach and €50.00 per day that the breach continues.

## **Article 12. Duration and termination**

1. This Processing Agreement shall be concluded by accepting the general terms and conditions of Garden Connect, signing quotations and/or price quotations issued and/or paying invoices sent by Garden Connect to the Client.
2. This Processing Agreement has been entered into for the duration as stipulated in the main agreement between the Parties and, in the absence thereof, in any event for the duration of the cooperation.
3. As soon as the Processing Agreement is terminated, for whatever reason and in whatever way, Processor shall return all personal data present with it in original or copy form to the Controller, and/or delete and/or destroy these original personal data and any copies thereof within 12 months or at the request of the Controller in a careful and secure manner.
4. Processor shall be entitled to revise this Processing Agreement from time to time. It shall give at least three months' notice of any changes to Controller. Controller may cancel by the end of these three months if it cannot agree to the changes.
5. Obligations that by their nature are intended to continue after termination of the Processing Agreement shall continue to exist, including the reporting of data leaks and the duty of confidentiality.

## **Article 13. Final provisions**

1. The provisions of this Processing Agreement shall prevail over the provisions in the general terms and conditions of the Processor, unless an explicit reference is made to a provision in the general terms and conditions.
2. The nullity of any provision in this Processing Agreement shall not affect the validity of the remaining provisions. Null and void or voidable provisions shall be replaced by new provisions to be determined by mutual agreement between the Parties, whereby the purpose and purport of the null, void or voidable provision shall be taken into account to the extent possible. The Processing Agreement and its execution shall be governed by Dutch law.

3. Any disputes that may arise between the Parties in connection with the Processing Agreement shall be submitted to the competent court for the district in which Processor has its registered office.

# Annex 1- GDPR: Specification of personal data and data subjects

## Personal data

In the context of article 1.1 of the Processing Agreement, Processor shall process the following (special) personal data on behalf of Controller:

- Name and address details
- Telephone number
- E-mail address
- Visiting behaviour
- IP address
- Social media accounts
- C.V.
- Date of birth
- Financial data
- Information provided on the website and/or webshop and/or app
- Purchase and transaction data
- Information linked to customer and loyalty cards

Of the categories of data subjects:

- Customers
- Suppliers
- Account holders
- Applicants
- Website visitors
- Potential customers
- Members
- Card holders
- App users
- Shop, company or event visitors
- Participants in contests

Controller guarantees that the personal data and categories of data subjects described in this Annex 1 are complete and correct, and indemnifies Processor against any defects and claims resulting from an incorrect representation by Processor.

## **Annex 2 - GDPR: Overview of security measures**

The Processor has the following technical and organizational measures to protect personal data against loss or unlawful processing:

### **Technical security measures**

- Up to date virus scan on all laptops using Symantec Endpoint Protection or equivalent software
- Restricting the use of USB sticks for data storage and data exchange
- Security of portable devices such as tablets and phones by means of access codes
- Dual verification on critical systems and software where data storage takes place
- Dual verification of software to which users log in
- Dual verification on laptops using a boot login and user account per employee
- Physical protection of laptops within the working environment of Processor
- Encrypted storage of passwords and Controller login details if necessary
- Where possible, encrypting of communications with third party software (including but not limited to API linking)

### **Organisational security measures**

- Clean desk policy
- Laptops not left unattended without locks
- Laptops never left in cars
- Preventing the storage of documents on employees' equipment and the regular cleaning up of old data on equipment
- Careful removal and destruction of old equipment

## **Annex 3 - GDPR: information to be provided in case of data breach**

The Processor shall provide any information that the Controller deems necessary to assess the incident. In doing so, Processor shall in any case provide the following information to Controller:

- The (alleged) cause of the data breach
- The (known and/or expected) consequence
- The (proposed) solution
- Contact details for following up the report
- Number of persons whose data are involved in the breach (if no exact number is known: the minimum and maximum number of persons whose data are involved in the breach)
- A description of the group of persons whose data are involved in the breach
- The type(s) of personal data involved in the breach
- The date on which the breach took place (if no exact date is known: the period during which the breach took place)
- The date and time at which the breach became known to Processor or to a third party or sub-processor engaged by Processor
- Whether the data was encrypted, hashed or otherwise made incomprehensible or inaccessible to unauthorized persons
- What the measures were to end the breach and to limit its impact?

# Annex 4: SSL certificates and domain registrations

## SSL Certificates

1. Garden Connect takes care of the application and implementation of SSL certificates on behalf of the client. Garden Connect uses Comodo certificates and Let's Encrypt certificates. Client understands that Garden Connect only acts as an intermediary in this respect and is not responsible for the technical and/or organizational and/or administrative requirements set.

2. Client agrees to the requirements set by Comodo or Let's Encrypt. On <https://www.comodoca.com/en-us/legal/> and <https://letsencrypt.org/> you can find the most current documents and conditions regarding the delivery of SSL certificates.

## Domain registrations

1. Garden Connect takes care of the application and registration of domain names on behalf of the client. Client understands that Garden Connect only acts as an intermediary in this matter and will register these domain names with the competent authority. Each domain extension is subject to a different authority and different requirements.

2. In the following article, the most frequently used bodies have been named. Client shall inform about the requirements for registering domain names before Garden Connect is asked to register a domain name. Garden Connect is not

responsible for the technical and/or organizational and/or administrative requirements.

### 3. Competent authorities per domain registration:

.AM - [www.internetsociety.org](http://www.internetsociety.org)

.AMSTERDAM - [www.amsterdam.nl](http://www.amsterdam.nl)

.ASIA - [www.dot.asia](http://www.dot.asia)

.AT - [www.nic.at](http://www.nic.at)

.BE - [www.dns.be](http://www.dns.be)

.BIZ - [www.home.neustar](http://www.home.neustar)

.CA - [www.cira.ca](http://www.cira.ca)

.catering - [www.donuts.domains](http://www.donuts.domains)

.CH - [www.switch.ch](http://www.switch.ch)

.CN - [www.cnnic.com.cn](http://www.cnnic.com.cn)

.COM - [www.verisign.com](http://www.verisign.com)

.COM.CN - [www.verisign.com](http://www.verisign.com)

.CO.UK - [www.nominet.uk](http://www.nominet.uk)

.CO.ZA - [www.zadna.org.za](http://www.zadna.org.za)

.CZ - [www.nic.cz](http://www.nic.cz)

.DE - [www.denic.de](http://www.denic.de)

.DK - [www.difo.dk](http://www.difo.dk)

.ES - [www.Red.es](http://www.Red.es)  
.EU - [www.eurid.eu](http://www.eurid.eu)  
.FI - [www.traficom.fi](http://www.traficom.fi)  
.FR - [www.afnic.fr](http://www.afnic.fr)  
.FRL - [www.registreer.frl](http://www.registreer.frl)  
.GR - [www.ics.forth.gr](http://www.ics.forth.gr)  
.IE - [www.ucd.ie](http://www.ucd.ie)  
.IM - [www.gov.im](http://www.gov.im)  
.IN - [www.nixi.in](http://www.nixi.in)  
.INFO - [www.afilias.info](http://www.afilias.info)  
.IO - [www.icb.co.uk](http://www.icb.co.uk)  
.IT - [www.iit.cnr.it](http://www.iit.cnr.it)  
.JE - [www.channelisles.net](http://www.channelisles.net)  
.LI - [www.switch.ch](http://www.switch.ch)  
.LT - [en.ktu.edu](http://en.ktu.edu)  
.LU - [www.restena.lu](http://www.restena.lu)  
.LV - [www.nic.lv](http://www.nic.lv)  
.ME - [www.gov.me](http://www.gov.me)  
.NET - [www.verisign.com](http://www.verisign.com)  
.NL - [www.sidn.nl](http://www.sidn.nl)  
.NU - [www.iusn.org](http://www.iusn.org)  
.ORG - [www.thenew.org](http://www.thenew.org)  
.ORG.UK - [www.nominet.uk](http://www.nominet.uk)

.PL - [www.nask.pl](http://www.nask.pl)

.PRO - [www.afilias.info](http://www.afilias.info)

.PT - [www.dns.pt](http://www.dns.pt)

.RENT - [www.nic.xyz](http://www.nic.xyz)

.RU - [www.cctld.ru](http://www.cctld.ru)

.SE - [www.internetstiftelsen.se](http://www.internetstiftelsen.se)

.SHOP - [www.gmoregistry.com](http://www.gmoregistry.com)

.SI - [www.arnes.si](http://www.arnes.si)

.SK - [www.sk-nic.sk](http://www.sk-nic.sk)

.TV - [www.tuvaluislands.com](http://www.tuvaluislands.com)

.UK - [www.nominet.uk](http://www.nominet.uk)

.US - [www.home.neustar](http://www.home.neustar)